

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: Community Development Director

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into by and between the City of Huntington Beach, a municipal corporation of the State of California (the “City”), and Signal Landmark, Inc., a California corporation (“Developer”). The City and Developer shall be referred to jointly within this Agreement as the “Parties” and individually as a “Party.” For the convenience of the reader, a Glossary of Defined Terms used in this Agreement follows the signature pages.

RECITALS

- A. This Agreement is one of a series of actions by the City (collectively, the “Concurrent Approvals”) which will implement an April 2016 settlement of litigation (the “Settlement”) between the City, Developer, and the Bolsa Chica Land Trust (the “BCLT”) with respect to development of property described below as the “Windward Site” (see Recital D).
- B. The purpose of this Agreement is to provide assurances to the City, the California Coastal Commission, and the community that development of that portion of the Windward Site defined in Recital D as the “Development Area” cannot begin unless:
1. **“Alternative 1”**: Both the Windward Site and the adjacent “Goodell Parcel” (described in Recital E below) are first made available for acquisition by the Trust for Public Lands (“TPL”) as set forth in Section¹ 4.1; or
 2. **“Alternative 2”**: If Alternative 1 does not occur pursuant to Section 4.1, Developer has conveyed² to a governmental agency or a qualified non-profit entity acceptable to the Executive Director of the Coastal Commission, such as, but not limited to, the BCLT³ (a “Qualified Non-Profit”) both (i) that portion of the Windward Site defined in Recital D as the “Windward Remainder” and (ii) the Goodell Parcel (see Section 4.2).

¹ “Section” means a numbered section of this Agreement, unless specifically stated to refer to another document.

² If a conveyance is made to a governmental entity, it will be made through an Irrevocable Offer of Dedication. If a conveyance is made to a non-profit entity, the conveyance may be through an instrument other than an Irrevocable Offer of Dedication, such as a grant deed, if (i) legally necessary to complete the conveyance and (ii) approved by the Executive Director of the Coastal Commission.

³ If the grantee, the BCLT must first be approved by the Executive Director of the Coastal Commission.

- C. Government Code Sections 65864 through 65869.5 and Chapter 246 of the City’s Municipal Code (the “Municipal Code”) authorize the City to enter into development agreements with the owners of legal or equitable interests in real property located within the City.
- D. The property subject to this Agreement is the Windward Site. Developer holds legal title to the Windward Site, which consists of approximately 5 acres, is described in Exhibit A,⁴ and depicted on Exhibit B. The Windward Site is in the City, southeast of the intersection of Bolsa Chica and Los Patos. Exhibit B identifies a portion of the Windward Site as the “Development Area” and the remainder as the “Windward Remainder.”
- E. Adjacent to and south of the Windward Site and in the unincorporated area of the County of Orange is the Goodell Parcel, which consists of approximately 6.2-acres. The Goodell Parcel is depicted on Exhibit B and described in Exhibit C.
- F. The Goodell Parcel is zoned Planned Community (PC), which allows single-family residential uses at a density of 6-12 units per acre. The City has pre-zoned 3.2 acres of the Goodell Parcel for single-family residential and 3 acres for open space uses. Developer holds an option to purchase legal title to the Goodell Parcel (the “Goodell Option”).
- G. Because the Goodell Parcel is not within the City, *this Agreement is not intended to and does not regulate the use of the Goodell Parcel*. The role of the Goodell Parcel as part of this Development Agreement is simply to allow Developer to convey its potential ownership interest in the Goodell Parcel to satisfy the conditions precedent to the development of a portion of the Windward Site if Alternative 1 does not occur. Any conveyance of and use restrictions imposed on the Goodell Parcel as described in this Agreement are voluntary on the part of Developer and not the result of regulations imposed on the Goodell Parcel by either the City or the Coastal Commission.
- H. The Settlement is memorialized in a “Litigation Settlement Agreement” which provides, among other things, that Developer and the City intend to enable either Alternative 1 or Alternative 2. This Agreement is a vehicle to facilitate the following actions (collectively, the “Project”) if Alternative 1 does not occur and Alternative 2 is implemented:
 - 1. The conveyance of title to that portion of the Windward Site outside the Development Area (the “Windward Remainder”) to either a governmental agency or a Qualified Non-Profit for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate (the “Windward Conveyance”);
 - 2. The conveyance⁵ of the Goodell Parcel to either a governmental agency or a Qualified Non-Profit for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate (the “Goodell Conveyance”); and

⁴ All references to “Exhibits” within this Agreement are references to exhibits to this Agreement unless otherwise specified. All Exhibits are incorporated as a substantive part of this Agreement.

⁵ See Footnote 2 above.

3. Developer's proposed medium density residential neighborhood within the "Development Area" (the "Development").

I. The Project is to be undertaken pursuant to the following approvals:

1. The certification by the Coastal Commission of Local Coastal Program Amendment No. ____ (the "LCPA"). The LCPA shall consist of:

a) General Plan Amendment No. ____ (the "GPA"); and

b) Specific Plan No. ____ (the "Specific Plan").

2. The approval and issuance of Coastal Development Permit No. ____ (the "CDP"). The CDP shall consist of:

a) Conditional Use Permit No. ____; and

b) Tentative Tract Map No. ____ (the "Map").

Together, these approvals shall be referred to within this Agreement as the "Concurrent Approvals." For purposes of this Agreement, the Concurrent Approvals shall be deemed to have occurred only if Developer has concurred with their form and substance as certified, approved, and issued, as applicable.

J. Government Code Section 65869 provides, in pertinent part, as follows:

"A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified . . . unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action."

Because this Agreement is premised upon the certification of the LCPA by the Commission, the Parties recognize that it may not be "applicable" to the Project until the date that the certification of the LCPA by the Coastal Commission is final (the "Certification Date").

K. The City Council has evaluated the potential environmental impacts of the Project ("the CEQA Review") pursuant to the California Environmental Quality Act ("CEQA"). The City Council has determined that the Project will not have any new or more severe potential adverse environmental impacts than were evaluated in the CEQA Review and that no further environmental review of this Agreement or the Concurrent Approvals is required.

L. As parties to the Settlement, the Parties each have an interest in securing implementation of the Settlement, which will be accomplished by providing for the orderly implementation of

the Project if Alternative 1 is not successful. This Agreement assures the City and the Coastal Commission that the Project cannot proceed without completion of both the Windward and Goodell Conveyances. It also assures Developer that if it completes the Windward and Goodell Conveyances, it will have the vested right to complete the Project on the terms set forth within this Agreement.

- M. On _____, 2017, the Planning Commission held a duly noticed public hearing on this Agreement and recommended to the City Council that it approve this Agreement.
- N. On _____, 2017, the City Council held a duly noticed public hearing on and approved this Agreement.
- O. The City Council has found that this Agreement is consistent with (i) the City’s General Plan as amended (including the Coastal Element as amended, provided that the Coastal Commission certifies the LCPA) and the Municipal Code in effect on the date of the first reading of the ordinance adopting this Agreement (the “Approval Date”) and (ii) the Subdivision Map Act.

AGREEMENT

The Parties agree as follows:

- 1. **DEFINITIONS.** Defined terms that are used more than once within this Agreement are listed in the Glossary following the signature page.
- 2. **EXHIBITS.** The following attached exhibits are incorporated as a part of this Agreement:
 - Exhibit A:** Legal Description of the Windward Site
 - Exhibit B:** Depiction of the Windward Site, the Development Area, the Windward Remainder, and the Goodell Parcel
 - Exhibit C:** Legal Description of the Goodell Parcel
- 3. **TERM OF AGREEMENT.** The term of this Agreement starts on the day after the Effective Date and ends fifteen (15) years after the Effective Date (the “Term”).⁶ For purposes of clarification, the City shall have no affirmative obligations under this Agreement until each and every one of the Concurrent Approvals has occurred.
 - 3.1 **Extensions for Cause.** The Term shall be extended for periods equal to the total cumulative time during which:

⁶ As noted in Recital J, however, this Agreement shall not become “applicable” to the Project until the Certification Date. The Parties recognize that the Effective Date will occur before the Certification Date.

- a. Any application by Developer (or, if applicable, City) for state (including the LCPA and the CDP) or federal regulatory permits and/or approvals required for the Project has been pending more than one year after its submittal;
- b. A Conflicting Emergency Regulation is applied to the Windward Site or the Project; and
- c. Other delays have arisen which are within the scope of Section 12.8.

4. PUBLIC BENEFIT. As a party to the Settlement, the City has an interest in securing the public benefits provided by the Settlement. The City's approval of this Agreement provides an opportunity to facilitate one of the following public benefit opportunities:

4.1 *Alternative 1: Acquisition by Trust for Public Land.* Pursuant to the Settlement, Developer has granted the Trust for Public Land ("TPL")⁷ an option to purchase the Windward Site and, after exercise of the Goodell Option by Developer, the Goodell Parcel (the "TPL Option"). The TPL Option provides TPL eighteen months in which to raise the purchase funds. The TPL Option will expire in October 2017.

4.2 *Alternative 2: Preservation Opportunity / Limited Development.* The Settlement allows Developer to pursue entitlements for residential development in the Development Area while TPL pursues acquisition funding. If Alternative 1 does not occur, then, in order to commence development of the Project, Developer must first make the Windward and Goodell Conveyances for the benefit of the public in the manner provided within this Agreement.

- a. *Goodell Conveyance Requirements.* The Goodell Conveyance shall include provisions stipulating that the Goodell Property shall be permanently restricted for passive public open space and resource conservation uses only. Permitted uses shall include pedestrian trails, observation areas, interpretive displays, habitat restoration, and any additional uses set forth in either the Settlement or the Mitigation Plan prepared pursuant to Consent Cease and Desist Order No. CCC-12-CD-01 and Consent Restoration Order No. CCC-12-RO-01, both approved by the Coastal Commission on September 11, 2013.

5. DEVELOPMENT OF THE WINDWARD SITE.

5.1 Developer's Vested Right. Subject to the Reservations of Authority (see Section 5.6), Developer shall have the vested right to complete the Project to the full extent permitted under the Applicable Rules ("Developer's Vested Right"). Developer's Vested Right shall accrue and be applicable to the Property and the Project after the Certification Date.

⁷ Founded in 1972, TPL is a nationwide non-profit organization that acquires land from private owners and conveys it into public or non-governmental organization ownership for conservation or public park purposes. Since its inception, TPL has protected 3.3 million acres of land in over 5,400 separate acquisitions.

5.2 Condition Precedent to City’s Submittal of Application for Certification of LCPA.

After the City’s approval of the GPA and the Specific Plan and the City’s approval in concept of the CDP and before the City submits its application for certification of the LCPA to the Coastal Commission, Developer shall deliver to the City, for inclusion within that application, fully-executed documents, ready for recordation, as needed to complete the Windward and Goodell Conveyances. Those documents, however, shall contain a provision that they shall not be binding, recorded, or effective until after:

- a. The final approval of each of the Concurrent Approvals; and
- b. Either (i) the issuance of the approved CDP by the Coastal Commission, if the Coastal Commission was the agency granting final approval of the CDP, or (ii) the issuance by the City of the first grading permit for grading of the Project, if the City was the agency granting final approval of the CDP; and
- c. Either (i) the expiration, without a legal challenge having been filed, of all limitations periods for challenging the final approval, whether by the City or the Coastal Commission, of each of the Concurrent Approvals and the issuance of the CDP or (ii) if any legal challenge has been filed (including, but not limited to, challenges alleging a failure to comply with CEQA or the California Coastal Act), the challenge has concluded and the Concurrent Approvals and the issuance of the CDP have all been found valid.

5.3 Term of Project Approvals.

- a. **The Map.** Pursuant to Government Code Section 66452.6, the term of the Map shall be automatically extended to the end of the Term and any future extension of the Term.
- b. **Other Development Approvals.** The expiration of all other Development Approvals shall be governed by applicable state law, including Government Code Section 65863.9, and, where permitted under state and local law, all other Development Approvals shall be extended for a term ending concurrently with the term of the Map.

5.4 Development Fees. During the Term, City shall not impose upon the Project any Development Fees except those in effect under the Applicable Rules (“Existing Development Fees”). The only increases in Existing Development Fees which may be applied to Project are those set by automatic escalators in the Applicable Rules.

- a. **Exception.** Developer shall pay Traffic Impact Fees pursuant to Municipal Code Chapter 17.65 which will constitute satisfactory mitigation for traffic impacts created by the Project as identified by the CEQA Review.

5.5 Initiatives and Moratoria. As a Subsequent Land Use Regulation, any initiative or moratorium adopted after the Approval Date, no matter how enacted, shall not apply to the Project or the Windward Site without Developer’s written consent unless otherwise ordered by a court of competent jurisdiction.

5.6 Reservations of Authority. The following rights are reserved to the City:

5.6.1 City’s Discretion Under Applicable Rules. In considering applications for a Subsequent Development Approval or Subsequent Land Use Regulation, the City may exercise its regulatory discretion to the extent permitted by the Applicable Rules. Pursuant to Government Code Section 65865.2⁸, however, requirements for subsequent discretionary actions shall not prevent development of the Windward Site for the uses and to the density or intensity of development set forth in the Applicable Rules.

5.6.2 Conflicting Emergency Regulations. The City may adopt emergency rules, regulations, laws, and ordinances within the City’s police power that would limit the exercise of Developer’s Vested Right (“Conflicting Emergency Regulations”), provided that the Conflicting Emergency Regulations:

- (i) result from a sudden, unexpected emergency declared by the President of the United States, Governor of California, or the Mayor, City Council, or City Manager of the City;
- (ii) address a clear and imminent danger, with no effective reasonable alternative available that would have a lesser adverse effect on Developer’s Vested Right;
- (iii) do not primarily or disproportionately impact the Project; and
- (iv) are based upon findings of necessity established by a preponderance of the evidence at a public hearing.

Any action challenging the application of a Conflicting Emergency Regulation to the Windward Site or the Project shall be subject to de novo review by the court for compliance with the provisions of this Section.

5.7 Appeal of Administrative Decisions. Any decision of the Director or a City staff member with respect to this Agreement may be appealed to the Planning Commission. Planning Commission decisions may be appealed to the City Council.

6. DEVELOPER DEFAULTS AND REMEDIES.

⁸ GC 65865.2 provides, among other things, that a “development agreement may include conditions, terms, restrictions, and requirements *for subsequent discretionary actions*, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement.”

6.1 Periodic Review. The City shall periodically review Developer’s good faith compliance with this Agreement pursuant to Government Code Section 65865.1 (“GC 65865.1”) and Municipal Code Section 246.14 (“MC 246.14”) and consistent with the due process considerations set forth in Section 6.2 (the “Periodic Review”). It is emphasized, however, that the purpose of this Agreement is to serve as a vehicle to facilitate the conveyance by Developer of the Windward and Goodell Conveyances in exchange for Developer’s Vested Right. The Parties recognize that Developer’s only obligation under this Agreement is to comply with the provisions of Section 5.2 above.

6.2 Due Process Considerations. Developer has committed through this Agreement to make the Windward and Goodell Conveyances before permits are issued to begin work on the Project. Developer would not have entered into this Agreement and made that commitment without assurances that Developer’s Vested Right could not be terminated or modified without a fair and equitable Periodic Review process⁹ consistent with GC 65865.1, MC 246.14 and general principles of fairness and due process. Therefore, the following requirements shall apply to Periodic Reviews and any other review of or allegation of noncompliance pertaining to this Agreement:

- a. **Modifications for Noncompliance.** The terms of GC 65865.1 allow a local agency to terminate or modify a development agreement if a periodic review of compliance with the terms of the development agreement demonstrates noncompliance by the applicant/developer. The local agency’s right to do so is stated in permissive, rather than mandatory, terms: “the local agency may terminate or modify the agreement.”¹⁰ Therefore, as material consideration for entering into this Agreement and in light of the extremely limited obligations of Developer under this Agreement, the Parties have agreed that, in the event of a finding of noncompliance, the City shall not modify the terms of this Agreement unless the modification has been agreed to by Developer, as provided in Government Code Section 65868.
- b. **Standard of Evidence.** GC 65865.1¹¹ contains permissive terms which allow a local agency to terminate a development agreement if a periodic review demonstrates, “on the basis of substantial evidence,” that there has been noncompliance. The Parties recognize that the loss of Developer’s Vested Right upon a showing of “substantial evidence” of noncompliance would be unfair and inequitable. Therefore, as material consideration for entering into this Agreement, the Parties have agreed that any City finding of Developer’s noncompliance must be based upon the “preponderance of the evidence,” as would be the case with other breach of contract actions under California law.

⁹ These considerations apply equally to any other process by which this Agreement is terminated or modified.

¹⁰ Subsection F of MC 246.14 contains the same permissive provision.

¹¹ Subsection F of MC 246.14 contains the same permissive provision.

6.3 Mortgagee Default Protection. If a Mortgagee requests from the City a copy of any notice of default given to Developer, the City shall provide a copy of that notice to the Mortgagee within ten (10) calendar days after receiving the Mortgagee's request. The Mortgagee shall have the right, but not the obligation, to cure the Default during any cure period allowed Developer under this Agreement.

7. CITY DEFAULTS AND REMEDIES.

7.1 Notice of City Default. After the Certification Date, if Developer believes that the City has failed to honor Developer's Vested Right (a "City Default"), Developer shall submit to the City a written notice of default stating those obligations which Developer alleges have not been performed by City (a "Notice of City Default"). After receiving a Notice of City Default, the City shall promptly commence to cure the identified City Default at the earliest reasonable time after receipt of the Notice of City Default and shall complete the cure within thirty (30) calendar days after receipt of the Notice of City Default, or such longer period as is reasonably necessary to feasibly remedy the City Default. The City shall continuously and diligently pursue the cure until the cure is complete. In no event shall the cure period exceed one hundred twenty (120) calendar days. If the City disputes the existence of a City Default or whether the City has cured the City Default, either Party may seek declaratory relief from a court of law.

7.2 No Monetary Damages. Developer's sole remedy for breach of any provision of this Agreement is for specific performance. Under no circumstances shall City be liable to Developer for monetary damages of any nature.

8. MODIFICATION, AMENDMENT, CANCELLATION OR TERMINATION.

8.1 Amendment and Cancellation. Notwithstanding any other provision of this Agreement, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and Developer, subject to compliance with Government Code Sections 65867, 65867.5, and 65868.

8.2 Minor Changes. Pursuant to Municipal Code Section 246.18, the Director, with the written consent of Developer, may make changes to the Agreement without formal action by the City Council if those changes do not (i) modify the Term or the permitted uses, (ii) increase the density or intensity of uses or the maximum height or size of buildings, or (iii) modify the substantive provisions for reservations or dedication of land ("Minor Changes").

9. OTHER LEGAL ACTIONS, REMEDIES, AND INDEMNIFICATION

9.1 Third-Party Actions. If a third-party action (a "Third-Party Action") is filed which seeks to (i) attack, set aside, void, or annul the approval of this Agreement, (ii) challenge any of the Project's Development Approvals or Subsequent Development Approvals,

or (iii) otherwise delay, impede, or impair implementation of the Project, the Parties shall cooperate in the defense of that Third-Party Action.

9.2 Indemnification of City. With respect to a Third-Party Action, Developer shall, at Developer's expense, defend, indemnify, and hold harmless City, its officers, employees, and independent contractors engaged in Project planning or implementation. Developer shall provide a defense to the City with counsel reasonably selected by Developer to defend both the City and Developer and shall reimburse the City for any court costs which the City may be required to pay as a result of a Third-Party Action. The City may, in its sole discretion, participate in the defense of a Third-Party Action at its own expense, but, except for those defense costs, the City's participation shall not relieve Developer of the remainder of its indemnification obligations under this Section 9.2.

9.3 Effect on Project. The filing of a Third-Party Action shall not excuse, delay, or stop the Project in any manner, including the processing or construction of the Project, approval of Subsequent Development Approvals, or issuance of ministerial approvals by the City, unless the third party obtains a court order preventing the activity or invalidating this Agreement. The City shall not stipulate to the issuance of any such order without Developer's prior written consent.

10. NOTICES. All notices, demands, and correspondence required or permitted by this Agreement (collectively, "Notices") shall be in writing. Notices shall be either personally delivered or sent by registered or certified mail or overnight mail service. Notices shall be deemed received upon personal delivery or on the second business day after registered, certified, or overnight mailing. Notices shall be addressed as follows:

City or Developer may change its address by giving written Notice to the other Party. Thereafter, Notices shall be addressed and transmitted to the new address.

If to City, to:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
92648
Attn: City Manager

If to Developer, to:

Signal Landmark, Inc.
27271 Las Ramblas
Suite 100
Mission Viejo, CA 92692

With a Copy to:

Tim Paone
Cox, Castle & Nicholson
3121 Michelson Drive
Suite 200
Irvine, CA 92612

11. ENCUMBRANCES, ASSIGNMENTS, TRANSFERS, AND RELEASES

11.1 Discretion to Encumber. Developer may, in its sole discretion, encumber some or all of the Windward Site or improvements on the Windward Site with a Mortgage.

11.2 Mortgagee Protection. If a Mortgagee in possession of the Windward Site requests Minor Changes, City shall meet with Developer and the Mortgagee to negotiate in good faith the requested Minor Changes. City will not unreasonably withhold or delay

its consent to a requested Minor Change if the Minor Change is consistent with the intent and purposes of this Agreement. The following terms apply to all Mortgages:

- a. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage.
- b. Except as otherwise provided within this Agreement, a Mortgagee who takes possession of some or all of the Windward Site shall take the property subject to this Agreement, including the provision that Developer cannot begin any work on the Project without first making the Windward and Goodell Conveyances.

11.3 Assignment. If Developer sells or otherwise conveys (an "Assignment") all or a portion of Developer's interest in the Windward Site (the "Transferred Property"), the assignee of that Assignment (the "Assignee") shall be subject to all provisions of this Agreement previously applicable to Developer with respect to the Transferred Property, including, but not limited to, the conditions precedent to the commencement of Development set forth in Section 5.2. The Assignee shall have no obligations with respect to portions of the Windward Site not transferred ("Retained Property"). Developer shall remain liable for performance of Retained Property obligations, including, but not limited to, the conditions precedent to the commencement of Development set forth in Section 5.2, but shall have no further obligations with respect to the Transferred Property.

12. MISCELLANEOUS PROVISIONS.

- 12.1 Cooperation.** The Parties shall cooperate in good faith to assist each other in the performance of the provisions of this Agreement.
- 12.2 Recordation.** The City Clerk shall cause a copy of this Agreement to be recorded against the Windward Site with the County Recorder within ten (10) calendar days after the Effective Date. The failure of the City to sign and/or record this Agreement shall not affect the validity of this Agreement.
- 12.3 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 12.4 No Third Party Beneficiaries.** No person or entity other than the City and Developer shall have any right of action based upon any provision of this Agreement.
- 12.5 Entire Agreement.** This Agreement represents the entire and final agreement of the Parties with respect to the subject matter of this Agreement.
- 12.6 Litigation Expenses.** In any litigation between the Parties related to this Agreement, each of the Parties shall bear its own attorneys' fees and other expenses incurred in that proceeding.

12.7 Waiver. All waivers of performance must be in a writing signed by the Party granting the waiver. Failure by a Party to insist upon the strict performance of any provision of this Agreement shall not be a waiver of future performance of the same or any other provision of this Agreement.

12.8 Delay for Events Beyond the Parties' Control. Performance by either Party of its obligations under this Agreement shall be excused and the Term shall be extended for periods equal to the time during which (i) litigation is pending which challenges any matter, including compliance with any other local, state, or federal law, related to the approval or implementation of the Project or (ii) a delay in a Party's performance is caused by any event beyond the control of that Party. Examples of such events include acts of nature, newly-enacted federal or state laws or regulations, judicial actions such as the issuance of restraining orders and injunctions, riots, strikes, and damage to work in process by reason of fire, mud, rain, floods, earthquake, or other such casualties. With respect to litigation, extensions shall be equal to the time between the filing of the action and the entry of final judgment or dismissal after the conclusion of all appeals and/or the expiration of all time periods during which an appeal could be brought. All extensions under this Section 12.8 shall be cumulative.

A Party seeking excuse from performance under this Section shall provide written Notice to the other Party within thirty (30) calendar days after becoming aware of the delay. Either Party may file an action for judicial review of any requested excuse from performance.

12.9 Timing of Development. Because of the California Supreme Court holding in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), the Parties intend for Developer to have the right to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Developer deems appropriate in its sole subjective business judgment.

12.10 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

12.11 Interpretation. This Agreement has been prepared jointly by both Parties and shall not be interpreted or construed against either Party as the preparer.

12.12 Estoppel Certificate. During the Term, either Party may request from the other an "Estoppel Certificate" certifying that:

- a. This Agreement is unmodified and in full force and effect; or
- b. There have been specific (date and description) modifications to the Agreement, but it remains in full force and effect as modified.

The Estoppel Certificate shall also certify one of the following, if requested:

- c. There are no known current uncured Defaults; or
- d. There are specific (date, description, and status) Defaults which exist.

Within ten (10) business after receiving the request, the responding Party shall deliver the completed Estoppel Certificate to the requesting Party. Estoppel Certificates shall provide any other reasonable information requested. A failure to timely deliver an Estoppel Certificate shall create a conclusive presumption that this Agreement is in full force and effect without modification or Default. Developer shall pay City for City's reasonable costs incurred in issuing Estoppel Certificates.

12.13 Governing Law and Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in Orange County, California.

Developer and City have executed this Agreement on the dates set forth below.

SIGNATURE PAGE TO BE ADDED

ACKNOWLEDGMENTS TO BE ADDED

EXHIBITS TO BE ADDED AFTER GLOSSARY

GLOSSARY OF DEFINED TERMS

Within this Agreement, the following defined terms have the meanings set forth below:

1. **“Adopting Ordinance”** means City Ordinance No. ____ approving this Agreement.
2. **“Agreement”** means this Development Agreement.
3. **“Applicable Rules”** means the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Developer has consented in writing, and Subsequent Development Approvals.
4. **“Approval Date”** means the date of the first reading of the Adopting Ordinance.
5. **“Assignee”** means the person or entity to whom Developer transfers Developer’s interest in all, any portion of, or any interest in the Windward Site.
6. **“Assignment”** means the sale, transfer, or assignment of Developer’s rights and obligations under this Agreement in connection with a transfer of Developer’s interest in all, any portion of, or any interest in the Windward Site.
7. **“BCLT”** means the Bolsa Chica Land Trust.
8. **“Certification Date”** means the date of the certification of the LCPA by the Coastal Commission.
9. **“CDP”** means Coastal Development Permit No. ____ for the Project.
10. **“CEQA”** means the California Environmental Quality Act.
11. **“CEQA Review”** means the evaluation by the City of the Project’s potential environmental impacts pursuant to CEQA.
12. **“City”** means the City of Huntington Beach, California.
13. **“City Council”** means the City Council of the City.
14. **“Coastal Commission”** means the California Coastal Commission.
15. **“Concurrent Approvals”** means the following approvals:
 - Local Coastal Program Amendment No. ____ (the “LCPA”), provided that it has become “applicable” to the Project pursuant to Government Code Section 65869. The LCPA shall consist of:
 - a. General Plan Amendment No. ____ (the “GPA”); and
 - b. Specific Plan No. ____ (the “Specific Plan”).
 - Coastal Development Permit No. ____ (the “CDP”). The CDP shall consist of:

- a. Conditional Use Permit No. ____; and
- b. Tentative Tract Map No. ____ (the “Map”).

For purposes of this Agreement, the Concurrent Approvals shall be deemed to have occurred only if Developer has concurred with their form and substance as approved.

16. **“Conflicting Emergency Regulations”** means those emergency rules, regulations, laws, and ordinances affecting land use that otherwise conflict with this Agreement or limit the exercise of Developer’s Vested Right that are set forth in Section 5.6.2.
17. **“Developer”** means Signal Landmark, Inc., a California corporation.
18. **“Developer’s Vested Right”** means Developer’s right to develop the Project in accordance with the Applicable Rules, as more specifically set forth in Section 5.
19. **“Development”** means Developer’s proposed medium density residential neighborhood within the Development Area.
20. **“Development Approvals”** means all permits, certificates, approvals, and other entitlements approved or issued by the City for construction, marketing, use, occupancy, and/or development of or on the Development Area. For the purposes of this Agreement, Development Approvals shall be deemed to include, but are not limited to, the following actions, including revisions, addenda, amendments, and modifications to these actions:
 - This Agreement;
 - Coastal Development Permits;
 - Tentative Maps, Final Maps, parcel maps, and any other approvals required by or permitted under the Subdivision Map Act and/or the City’s subdivision ordinance;
 - Conditional use permits, use permits, temporary use permits, and site development permits;
 - Variances and waivers of development standards;
 - Grading, excavation, building, and other construction-related permits;
 - Certificates of compliance and/or lot line adjustments;
 - Street, drainage, utility, stormwater, and landscape permits;
 - Encroachment permits;
 - Occupancy permits; and
 - Environmental review documents for the Project.

21. **“Development Area”** refers to that portion of the Windward Site designated on Exhibit B as “Development Area.”
22. **“Development Fees”** means all taxes, fees, or other exactions charged by the City in connection with the development of land, including the application, processing, approval, and/or issuance of Development Approvals or Land Use Regulations. Development Fees include, but are not limited to, development impact fees imposed pursuant to California’s Mitigation Fee Act. Other examples of Development Fees include inspection, plan check, utility capacity, service, connection, library, cultural enrichment, park, flood control, stormwater management, mitigation, and public facilities fees.
23. **“Director”** means the Director of Community Development of the City.
24. **“Effective Date”** means the date on which the Adopting Ordinance has become effective as provided by California law.
25. **“Estoppel Certificate”** means a written statement issued pursuant to Section 12.11.
26. **“Exhibit”** means an exhibit to this Agreement, unless otherwise expressly stated.
27. **“Existing Development Fees”** means those Development Fees which had been adopted and were in effect prior to the Approval Date.
28. **“Existing Land Use Regulations”** means all Land Use Regulations in effect on the Effective Date, including those Concurrent Approvals which are Land Use Regulations. However, changes to Land Use Regulations adopted (as opposed to becoming effective) between the Approval Date and the Effective Date shall not be considered part of the Existing Land Use Regulations without Developer’s prior written consent. Developer shall be deemed to have consented to those Concurrent Approvals which, though approved on the Approval Date, are not effective until the Effective Date.
29. **“Final Map”** means a final parcel map or final tract map for the Project, as defined in the Subdivision Map Act and the Municipal Code.
30. **“General Plan”** means the General Plan of the City in effect on the Approval Date and as amended through the GPA.
31. **“Goodell Conveyance”** means the conveyance of the Goodell Parcel to either a governmental agency or a Qualified Non-Profit, such as the BCLT, acceptable to the Executive Director of the Coastal Commission, for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate.
32. **“Goodell Option”** means Developer’s option to acquire the Goodell Parcel as described in Section 4.
33. **“Goodell Parcel”** means the approximately 6.2-acre parcel designated on Exhibit B as the “Goodell Parcel.”

34. **“GPA”** means the amendment of the General Plan through the City Council’s adoption of General Plan Amendment No. ____ for the Windward Site.
35. **“Land Use Regulations”** means all ordinances, resolutions, codes, rules, regulations, moratoria, initiatives,¹² and official policies of the City governing the development and use of land, including, without limitation, the General Plan and each of its elements (including the Coastal Element), zoning ordinances, subdivision ordinances (but not Tentative or Final Maps, which are Development Approvals), specific plans, and their respective amendments. Land Use Regulations govern, among other things, the permitted use of land, the density or intensity of use, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, construction, and initial occupancy standards and specifications applicable to the Project. Land Use Regulations do not include any City ordinance, resolution, code, rule, regulation or official policy governing:
- The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;
 - Taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement for which Developer is paying any fee (directly or through an assessment or similar financing district) or providing any improvement pursuant to this Agreement; or
36. **“LCPA”** means Local Coastal Program Amendment No. ____, as approved by the City and certified by the Coastal Commission on terms acceptable to Developer.
37. **“Map”** means Tentative Tract Map No. _____ for the Windward Site which was approved by the City Council on the Approval Date.
38. **“Minor Changes”** means any change to the Project that does not modify the Term, alter the permitted uses, increase the density or intensity of uses, increase the maximum height or size of buildings, or modify the substantive provisions for reservations or dedication of land.
39. **“Mortgage”** means any mortgage, deed of trust, or other security device recorded against some or all of the Windward Site or improvements to the Windward Site for the purpose of securing a debt or other obligation.
40. **“Mortgagee”** means a mortgagee of a Mortgage, a beneficiary under a deed of trust or any other security device, a lender, and their successors and assigns.

¹² Because initiatives and moratoria, no matter how enacted, are legislative acts, they are Land Use Regulations. Therefore, any initiative or moratorium adopted after the Approval Date, no matter how enacted, is, for purposes of this Agreement, a Subsequent Land Use Regulation.

41. **“Municipal Code”** means the Municipal Code of the City.
42. **“Notice”** means any notice, demand, or correspondence required or permitted by this Agreement.
43. **“Party”** or **“Parties”** means either City or Developer or both, as determined by the context.
44. **“Periodic Review”** means the review by the City of Developer’s good faith compliance with the terms of this Agreement pursuant to Section 6.
45. **“Planning Commission”** means the Planning Commission of the City.
46. **“Project”** means the Windward Conveyance, the Goodell Conveyance, and the Development, collectively and to the full extent permitted by the Applicable Rules.
47. **“Qualified Non-Profit”** is a non-profit entity in good standing which is qualified to undertake the responsibilities to be conveyed and which has been approved by the Executive Director of the Coastal Commission.
48. **“Retained Property”** means any portion of the Windward Site not included within an Assignment, as set forth in Section 11.3.
49. **“Section”** refers to a numbered section of this Agreement, unless specifically stated to refer to another document or matter.
50. **“Settlement”** means the April 2016 settlement of litigation between Developer, the City, and the BCLT related to the City’s approval in 2010 of a project known as “The Ridge” which was proposed for the Windward Site.
51. **“Specific Plan”** means Specific Plan No. ____ for the Windward Site, as may be amended from time to time to the extent permitted by this Agreement.
52. **“Subsequent Development Approvals”** means all Development Approvals to which Developer has consented and which are approved, granted, or issued for the Project on or after the Approval Date, including the Map and the CDP.
53. **“Subsequent Land Use Regulations”** means those Land Use Regulations which are both adopted and effective after the Approval Date and which are not included within the definition of Existing Land Use Regulations. “Subsequent Land Use Regulations” include any Land Use Regulations adopted by moratorium, initiative, City action, or otherwise.
54. **“Tentative Map”** means a tentative parcel map or tentative tract map, as defined in the Subdivision Map Act and the Municipal Code, for the Project.
55. **“Term”** means the term of this Agreement as set forth in Section 3.
56. **“Third-Party Action”** means a legal action, including appellate review, which is brought with respect to this Agreement by a person or entity other than one of the Parties, including, but not limited to, a governmental entity or official.

57. **“TPL”** means the Trust for Public Land.
58. **“TPL Option”** means the option agreement entered into between Developer and the Trust for Public Land for the purchase of the entire Windward Site and the Goodell Parcel, subject to the contingencies contained in the Settlement.
59. **“Transferred Property”** means all or that portion of the Windward Site which is the subject of an Assignment by Developer.
60. **“Windward Conveyance”** means the conveyance of that portion of the Windward Site other than the Development Area to either a governmental agency or a Qualified Non-Profit, such as the BCLT, acceptable to the Executive Director of the Coastal Commission, for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate.
61. **“Windward Remainder”** means that portion of the Windward Site identified as the “Windward Remainder” on Exhibit B.
62. **“Windward Site”** means the approximately 5-acre parcel of land which is more particularly described in Exhibit A and depicted as the “Windward Site” on Exhibit B.