

ORDINANCE NO. 4135

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON BEACH AND SIGNAL LANDMARK (DEVELOPER) (DEVELOPMENT AGREEMENT NO. 16-001)

WHEREAS, the Planning Commission approved Conditional Use Permit No. 16-035, Coastal Development Permit No. 16-018, and Tentative Tract Map No. 18060 to develop an approximately 2.5-acre property located at 17202 Bolsa Chica Street (Property) with 36 townhome units with a 3,800 square feet of resident recreation area (Project) pursuant to the Windward Specific Plan; and

The City and Developer each mutually desire to enter into a Development Agreement with one another to permit and ensure that the Property is developed in accordance with the approved Conditional Use Permit No. 16-035, Coastal Development Permit No. 16-018, and Tentative Tract Map No. 18060 and the Windward Specific Plan zoning regulations to achieve the mutually beneficial development of the Property.

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1: That the City Council hereby finds that Development Agreement No. 16-001 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 16-001 is consistent with the Huntington Beach General Plan; and
- b. Development Agreement No. 16-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO), the Huntington Beach Municipal Code, and the Subdivision Map Act; and
- c. Development Agreement No. 16-001 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of the zoning regulations in effect at the time of project approval, mitigation measures adopted for the Project in accordance with MND 16-003, and conditions approved for Conditional Use Permit No. 16-035, Coastal Development Permit No. 16-018, and Tentative Tract Map No. 18060; and

- d. The City Council has considered the fiscal effect of Development Agreement No. 16-001 on the City and the effect on public open space in the Bolsa Chica area and has balanced these needs against available fiscal and environmental resources.

SECTION 2: Based on the above findings, the City Council of the City of Huntington Beach hereby approves Development Agreement No. 16-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

SECTION 3: This ordinance shall take effect 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2018.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:




City Attorney

REVIEWED AND APPROVED:

City Manager

INITIATED AND APPROVED:



Director of Community Development

ATTACHMENTS:

Exhibit A: Development Agreement No. 16-001

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 NO. 16-001

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 "Required 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 Property" (see Recital E).
- 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 Property defined in Recital E as the "Windward Residential Parcel" cannot begin unless:
 1. **"Alternative 1":** Both the Windward Property and the adjacent "Goodell Property" (described in Recital F 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 qualifying non-profit organization entity acceptable to the City, such as, but not limited to, the BCLT³ (a "Qualifying Non-Profit

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 City.

³ If the grantee is the BCLT, the BCLT must first be approved by the City.

Organization”) both (i) that portion of the Windward Property defined in Recital E as the “Windward Open Space Parcel” and (ii) the Goodell Property (see Section 4.2).

- C. In addition, as set forth in Section 65864(b) of California’s Development Agreement Statute (Government Code Sections 65864-65869.5), this Agreement will provide necessary assurances to Developer that if Alternative 1 does not occur and Alternative 2 is implemented by Developer, development of the Windward Residential Parcel “may proceed in accordance with existing policies, rules and regulations.” Those “existing policies, rules, and regulations” are described and defined later in this Agreement as the “Applicable Rules.” Absent these assurances, Developer cannot make the “investment in and commitment to comprehensive planning” (see Government Code Section 65864(a)) facilitated by this Agreement.
- D. Government Code Sections 65864 through 65869.5 and Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (the “Zoning Code”) authorize the City to enter into development agreements with the owners of legal or equitable interests in real property located within the City.
- E. The property subject to this Agreement is the Windward Property. Developer holds legal title to the Windward Property, which consists of approximately 5 acres, is described in Exhibit A,⁴ and is depicted on Exhibit B. The Windward Property is in the City, southeast of the intersection of Bolsa Chica and Los Patos. Exhibit B identifies a portion of the Windward Property as the “Windward Residential Parcel” and the remainder as the “Windward Open Space Parcel.”
- F. Adjacent to and south of the Windward Property and in the unincorporated area of the County of Orange is the Goodell Property, which consists of approximately 6.2 acres. The Goodell Property is depicted on Exhibit B and described in Exhibit C. The City does not have jurisdiction over the Goodell Property.
- G. The Goodell Property is zoned, under the County of Orange, as 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 Property for single-family residential and 3 acres for open space uses. Developer holds an option to purchase legal title to the Goodell Property (the “Goodell Option”).
- H. Because the Goodell Property is not within the City, *this Agreement is not intended to and does not regulate the use of the Goodell Property*. The role of the Goodell Property as part of this Development Agreement is simply to allow Developer to convey its potential ownership interest in the Goodell Property to satisfy the conditions precedent to the development of the Windward Residential Parcel if Alternative 1 does not occur. Any

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.

conveyance of and use restrictions imposed on the Goodell Property as described in this Agreement are voluntary on the part of Developer and not the result of regulations imposed on the Goodell Property by either the City or the Coastal Commission.

- I. The City owns the thirty-foot strip of land located above the northerly boundary of the Development Site as shown on Exhibit “B” (the “City Property”).
- J. The Settlement establishes a program under which Developer and the City intend to enable either Alternative 1 or Alternative 2 (the “Settlement Program”). This Agreement is a vehicle to facilitate the following actions if Alternative 1 does not occur and Alternative 2 of the Settlement Program is implemented:
 - 1. The conveyance of title to that portion of the Windward Property outside the Windward Residential Parcel not slated for development under Alternative 2 (the “Windward Open Space Parcel”) to either a governmental agency or a Qualifying Non-Profit Organization for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate (the “Windward Conveyance”);
 - 2. The conveyance⁵ of the Goodell Property to either a governmental agency or a Qualifying Non-Profit Organization for public access, passive recreational use, habitat enhancement, and public trail purposes, as appropriate (the “Goodell Conveyance”); and
 - 3. Developer’s proposed medium density residential neighborhood within the “Windward Residential Parcel” (the “Development”).
- K. The Settlement Program and the Development are to be undertaken pursuant to the following approvals which, together, shall be referred to within this Agreement as the “Required Approvals” and which are anticipated to be sequenced as set forth in Recital L below:
 - 1. City approvals (collectively, the “City Approvals”):
 - a) Approval of a Local Coastal Program Amendment (the “LCPA”), consisting of (1) an amendment to the Coastal Element of the City’s General Plan which functions as the Land Use Plan portion of the LCP, and (2) the “Windward Specific Plan,” comprised of a Zoning Text Amendment and a Zoning Map Amendment to the Implementation Plan portion of the Local Coastal Program;
 - b) Approval of and entry into this Agreement;
 - c) Approval of a Coastal Development Permit (the “CDP”) authorizing construction of a 36-unit townhome development and associated infrastructure and consisting of (1) a Tentative Tract Map (the “Map”) subdividing the Windward Property into one numbered lot for residential development (the “Windward Residential Parcel”) and

⁵ See Footnote 2 above.

one lettered lot for open space (the “Windward Open Space Parcel”) and (2) a Conditional Use Permit (the “CUP”) allowing the development of the Windward Residential Parcel in accordance with the development standards set forth in the Windward Specific Plan and the LCPA (or as certified with suggested modifications adopted by the City); and

d) Approval of grading, building, and similar ministerial permits.

2. Coastal Commission actions (collectively, “Commission Approvals”):

a) Certification of the LCPA, in accordance with the City Approvals (or with suggested modifications approved by the City);

b) Approval of this Agreement to the extent, if any, required by Government Code Section 65869, including with respect to its terms regarding the acquisition, conveyance, and deed restriction of the adjacent Goodell Property; and

c) In the event the City’s approval of the CDP is appealed to the Coastal Commission, approval by the Commission of a coastal development permit.

L. The anticipated procedural *sequence* for obtaining the Required Approvals and the issuance of permits allowed by the CDP is:

1. Approval by the City of the City Approvals.

2. Submittal of an application to the Coastal Commission by the City for certification of the LCPA, in accordance with the City Approvals, and any required approval of this Agreement.

3. The certification by the Coastal Commission of the LCPA and, to the extent required, if any, the approval of this Agreement. (*Note: The Coastal Commission may make its approval of the LCPA subject to concurrence by the City Council with “suggested modifications” to the City’s proposed LCPA.*)

4. Approval by the City Council of the Coastal Commission’s “suggested modifications,” if any.

5. After certification of the LCPA is complete, approval by the City of the CDP or, in the event the City’s approval of the CDP is appealed to the Coastal Commission and for which the Coastal Commission determines the appeal raises substantial issue(s) regarding conformity of the CDP with the LCP, approval by the Commission of the CDP.

6. The issuance by the City of all permits related to the CUP, the Map, and the CDP, such as grading, building, and similar ministerial permits.

M. 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 Development until the date that the certification of the LCPA by the Coastal Commission is final (the “Certification Date”).

- N. The City Council has evaluated the potential environmental impacts of the Settlement Program (the “CEQA Review”) pursuant to the California Environmental Quality Act (“CEQA”). The City Council has determined that the Settlement Program 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 Required Approvals is required.
- O. As parties to the Settlement, the Parties each have an interest in securing the objectives of the Settlement. This Agreement assures the City and the Coastal Commission that if Alternative 1 of the Settlement Program is not successful, the Development 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 Development.
- P. On June 27, 2017, the Planning Commission held a duly noticed public hearing on this Agreement and recommended to the City Council that it approve this Agreement.
- Q. On _____, 2018, the City Council held a duly noticed public hearing on and approved this Agreement.
- R. The City Council has found that this Agreement is consistent with (i) the City’s General Plan as amended by the GPA (including the Coastal Element as amended, provided that the Coastal Commission certifies the LCPA) and the Huntington Beach Zoning and Subdivision Ordinance (the “Zoning 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.
- S. For emphasis and clarification, there are three defined dates which have different meanings and purposes within this Agreement and should not be confused. They are:
 - 1. The “Approval Date,” which is the date of the first reading of City Ordinance No. _____ approving this Agreement. (Note: That ordinance is referred to as the “Adopting Ordinance.”) That date is _____, 2018.

2. The “Effective Date,” which is the date on which the Adopting Ordinance becomes effective under California law. That date is thirty days after the “second reading” of the Adopting Ordinance. The Effective Date, therefore, is _____, 2018.
3. The “Certification Date,” which is the date that the certification of the LCPA by the Coastal Commission becomes final. That date is unknown at the time of the approval of this Agreement and will be determined by future events.

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 Property
 - Exhibit B:** Depiction of the Windward Property, the Windward Residential Parcel, the Windward Open Space Parcel, the Goodell Property, and the City Parcel.
 - Exhibit C:** Legal Description of the Goodell Property
3. **TERM OF AGREEMENT.** Subject to Section 5.1a below, the term of this Agreement starts on the day after the Effective Date and ends ten (10) years after the Certification Date (the “Term”).⁶ For purposes of clarification, neither Party shall have any obligations under this Agreement until the Certification Date, except for (i) the performance of those acts referenced in this Agreement which, by their context, are to occur before the Certification Date and (ii) the duty of cooperation set forth in Section 12.1.
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 Property and, after exercise of the Goodell Option by Developer, the

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

Goodell Property (the “TPL Option”). The TPL Option provides TPL eighteen months in which to raise the purchase funds. The TPL Option was originally set to expire in October 2017, but has since been extended to _____ 2018. The Settlement allows Developer to apply for and pursue approval of the Required Approvals during the term of the TPL Option while TPL pursues acquisition funding. If TPL exercises the TPL Option, Developer will withdraw any pending applications for the Required Approvals.

4.2 Alternative 2: Preservation Opportunity / Limited Development. If the TPL Option expires without being exercised, then, after obtaining approval of the Required Approvals and before commencing the Development, Developer must first make the Windward and Goodell Conveyances for the benefit of the public as set forth in Section 5 below (the “Implementation Documents”).

a. *Windward and Goodell Conveyance Deed Restrictions.* At the time and on the terms set forth in Chapter 5 of the Specific Plan, deed restrictions shall be recorded against the Windward Open Space Parcel and the Goodell Property permanently restricting each property to “Open Space and Conservation Uses” (the “Deed Restrictions”). For the purposes of this Agreement, “Open Space and Conservation Uses” shall mean and shall be limited to those “Open Space and Conservation Uses” set forth in Section 4.2 of the Specific Plan.

4.3 Windward Open Space Parcel Improvements. If Alternative 2 occurs, (i) Developer will improve the Windward Open Space Parcel with the public access amenities and habitat enhancement as identified in the Specific Plan and (ii) the homeowner’s association for the Windward Residential Parcel shall maintain those improvements until the Windward Open Space Parcel has been formally conveyed to either a governmental agency or a Qualifying Non-Profit Organization.

4.4 City Property Improvements. If Alternative 2 occurs, Developer will (i) improve the City Property with the trails, signage, and landscaping identified in the Specific Plan and (ii) maintain those improvements until the maintenance responsibility is transferred to the Development’s Homeowner’s Association.

5. DEVELOPMENT OF THE WINDWARD PROPERTY.

5.1 Developer’s Vested Right. Subject to the Reservations of Authority (see Section 5.7), Developer shall have the vested right to complete the Development to the full extent permitted under the Applicable Rules (“Developer’s Vested Right”). Developer’s Vested Right shall accrue and be applicable to the Development on the Certification Date.

a. *Limitation on Term of Developer’s Vested Right.* The sole reason that the City is entering into this Agreement is to benefit the public by facilitating (i) the Windward and Goodell Conveyances and (ii) the improvements and

maintenance of the City-owned Parcel and the Windward Open Space Parcel, in return for permitting development within the Windward Residential Parcel. As a result, the City has required assurances in this Agreement that Developer does not retain Developer's Vested Right if changes, other than "Minor Changes" (see Glossary of Defined Terms), to the Development are sought by Developer in the future. Therefore, if, after the LCPA has been certified and has become effective, the CDP has been approved, and all permits related to the CUP, the Map, and the CDP, such as grading, building, and similar ministerial permits, have been issued, Developer or any successor of Developer submits an application for an amendment to the LCP which proposes to alter the permitted uses of the Windward Residential Parcel, increase the density or intensity of uses on the Windward Residential Parcel, increase the maximum height or size of buildings permitted on the Windward Residential Parcel, or eliminate Developer's obligation to make the Windward and Goodell Conveyances, then Developer's Vested Right shall expire upon the submittal of that application.

- 5.2 Condition Precedent to Required Approvals Becoming "Operative."** To assure that development of the Windward Residential Parcel may not occur without the Windward Owner first taking the actions needed to implement the open space objectives of the Specific Plan and Alternative 2 of the Settlement, the certified LCPA shall become operative only on the terms and conditions set forth in Chapter 5, Section 5.3, of the Specific Plan.
- 5.3 Timing of Recordation of Implementation Documents.** The applicable Implementation Documents shall be signed and recorded and become effective only in the time, substance, and form set forth in Chapter 5, Section 5.4.2, of the Specific Plan as approved on the Approval Date (or with modifications acceptable to the City and Owner).
- 5.4 Timing of Permit Issuance.** Prior to the LCPA becoming operative, the City may not issue any permits pursuant to Specific Plan, with the exception of permits for archaeological studies and archaeological grading. Permits for archaeological studies and archaeological grading may be issued at any time after certification of the LCPA.
- 5.5 Term of Development Approvals.**
- a. **The Map.** Pursuant to Government Code Section 66452.6, the term of the Map shall be automatically extended by the Adopting Ordinance to the end of the Term and any future extension of the Term agreed upon by the Parties.
 - 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 by the Adopting Ordinance for a term ending concurrently with the term of the Map.

5.6 Initiatives, Moratoria, and Referenda. As a Subsequent Land Use Regulation, any initiative or moratorium adopted after the Approval Date, no matter how enacted, shall not apply to the Development or the Windward Property without Developer's written consent unless otherwise ordered by a court of competent jurisdiction. Pursuant to Government Code Section 65867.5(a), this Development Agreement is a legislative act subject to referendum.

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

- a. ***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 Property for the uses and to the density or intensity of development set forth in the Applicable Rules.
- b. ***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:
 - 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;
 - address a clear and imminent danger, with no effective reasonable alternative available that would have a lesser adverse effect on Developer's Vested Right;
 - do not primarily or disproportionately impact the Development; and
 - 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 Property or the Development shall be subject to de novo review by the court for compliance with the provisions of this Section.

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."

- c. ***Development Fees.*** The City may impose upon Developer any development fees that are applicable to all development within the City at the rate and the time generally applicable to all such development (“Development Fees”). Development Fees include 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.
- d. ***Affordable Housing In-Lieu Fee.*** Section 230.26 of the Zoning Code requires that at least ten percent (10%) of all new residential construction shall be affordable units, except as provided elsewhere within Section 230.26. Section 230.26(B)(5) of the Zoning Code provides that the terms of a project’s affordable housing requirement may be outlined in an applicable Specific Plan. The Windward Specific Plan provides for 36 residential units to be constructed on the Windward Residential Parcel. Pursuant to Sections 230.26(B)(1-2) of the Zoning Code, the affordable housing requirement for the Development is 3.6 units affordable to moderate-income households. Section 3.3.6 of the Specific Plan provides that this obligation may be satisfied through the payment of in-lieu fees. Therefore, the City and the Windward Owner are providing in this Agreement that prior to issuance of the first building permit for a residence within the Windward Residential Parcel, the Windward Owner shall pay in-lieu fees for all 36 units within the Development at the rate of \$50,000 for each unit, for a total payment of \$1,800,000.
- e. ***Suggested Modifications.*** Should the Commission suggest modifications to some or all of the LCPA pursuant to Public Resources Code Sections 30512 and/or 30513 (the “Suggested Modifications”):
 - This Agreement shall not require the City to agree to the Suggested Modifications if the Suggested Modifications make substantive changes to the LCPA as submitted to the Coastal Commission by the City which deprive the City of the public benefits set forth in Section 4 above; and
 - This Agreement shall terminate and shall not bind Developer if the Suggested Modifications are adopted by the City without the City first obtaining Developer’s written concurrence with the Suggested Modifications.

5.8 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.

5.9 Tentative Maps. Any Tentative Map approved for the Development shall comply with the provisions of Government Code Section 66473.7.

6. DEVELOPER DEFAULTS AND REMEDIES.

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 Zoning Code Section 246.14 and consistent with the due process considerations set forth in Section 6.2 (the "Periodic Review").

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 Development. 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, Zoning Code Section 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, 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 Damages.** Under no circumstances shall City be liable to Developer for damages, including, but not limited to, monetary damages, lost profits, out of pocket costs, and any other payment of any money, for a breach of this Agreement. Developer's sole remedies for breach of any provision of this Agreement shall be for declaratory relief, specific performance, and mandate.

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 Zoning 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 against the City with respect to this Agreement for any reason, including, but not limited to, (i) attacking, setting aside, voiding, or annulling the approval of this Agreement, (ii) challenging any of the Development’s Development Approvals or Subsequent Development Approvals, or (iii) otherwise delaying, impeding, or impairing implementation of the Development, the Parties shall cooperate in the defense of that Third-Party Action.
- 9.2 Indemnification of City.** With respect to any Third-Party Action, including an action challenging the sufficiency of environmental review and/or compliance with CEQA, Developer shall, at Developer’s expense, defend, indemnify, and hold harmless City, its officers, employees, and independent contractors engaged in Development 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 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 Development.** The filing of a Third-Party Action shall not excuse, delay, or stop the Development in any manner, including the processing or construction of the Development, 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 Property or improvements on the Windward Property with a Mortgage.

11.2 Mortgagee Protection. If a Mortgagee in possession of the Windward Property 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 Property shall take the property subject to this Agreement, including the provision that Developer cannot begin any work on the Development 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 Property (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, Developer's obligations set forth in Section 5.2 as conditions precedent to the City's submittal of its application for certification of the LCPA. The Assignee shall have no obligations with respect to portions of the Windward Property not transferred ("Retained Property"). Developer shall remain liable for performance of Retained Property obligations, including, but not limited to, Developer's obligations set forth in Section 5.2 as conditions precedent to the City's submittal of its application for certification of the LCPA, but shall have no further obligations with respect to the Transferred Property.

11.4 City's Consent to Assignment. The City's consent to an Assignment shall not be required except under the following circumstance:

If the Transferred Property is sold to an Assignee before Developer has exercised the Goodell Option, then the Assignee shall not obtain Developer's rights under this Agreement unless the City has first consented to the Assignment. The sole basis for the City's refusal to grant that consent, however, shall be that, in the reasonable and objective exercise of the City's judgment, both (i) the Assignee does not possess the financial capacity to exercise the Goodell Option and (ii) adequate security has

not otherwise been offered to the City to assure that the Goodell Option can be exercised so that the Goodell Conveyance can be made when and if the Required Approvals have been granted and Developer elects to implement development of the Windward Property as provided in this Agreement.

If Developer requests the City's consent to such an Assignment, the City's consent shall be deemed granted unless the City has refused in writing to give that consent within thirty (30) days after receiving written request for consent from Developer.

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

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

12.11 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.

12.12 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

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 Required Approvals, 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 Property.
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 Property.
7. **“BCLT”** means the Bolsa Chica Land Trust.
8. **“Certification Date”** means the date that the certification of the LCPA by the Coastal Commission becomes final.
9. **“CDP”** means Coastal Development Permit No. 16-018 for the Development, which will not be acted upon by the City Council until after certification of the LCPA.
10. **“CEQA”** means the California Environmental Quality Act.
11. **“CEQA Review”** means the evaluation by the City of the Settlement Program’s potential environmental impacts pursuant to CEQA.
12. **“City”** means the City of Huntington Beach, California.
13. **“City Approvals”** means the approval of Local Coastal Program Amendment No. 16-002 (the “LCPA”), consisting of General Plan Amendment No. 16-002 (the “GPA”), Zoning Text Amendment No. 16-004 for Specific Plan No. 16 (the “Specific Plan”), and Zoning Map Amendment No. 16-003 (the “Zoning Map Amendment”).
14. **“City Council”** means the City Council of the City.
15. **“City Property”** means the thirty-foot strip of land identified on Exhibit “B” as the “City-Owned Parcel” and located north of the Windward Property.
16. **“Coastal Commission”** means the California Coastal Commission.

17. **“Conflicting Emergency Regulations”** means those emergency rules, regulations, laws, and ordinances within the City’s police power that would limit the exercise of Developer’s Vested Right and fall within the descriptions set forth in Section 5.6b.
18. **“CUP”** means Conditional Use Permit No. 16-035 for the Development (the “CUP”).
19. **“Deed Restrictions”** means the recorded use restrictions limiting the Windward Open Space Parcel and the Goodell Property, respectively, to Open Space and Conservation Uses.
20. **“Developer”** means Signal Landmark, Inc., a California corporation.
21. **“Developer’s Vested Right”** means Developer’s right to complete the Development in accordance with the Applicable Rules, as more specifically set forth in Section 5.
22. **“Development”** means Developer’s proposed medium density residential neighborhood within the Windward Residential Parcel to the extent authorized by the Applicable Rules.
23. **“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 Windward Residential Parcel. 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 Settlement Program.

24. **“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.
25. **“Director”** means the Director of Community Development of the City.
26. **“Effective Date”** means the date on which the Adopting Ordinance has become effective as provided by California law.
27. **“Estoppel Certificate”** means a written statement issued pursuant to Section 12.11.
28. **“Exhibit”** means an exhibit to this Agreement, unless otherwise expressly stated.
29. **“Existing Land Use Regulations”** means all Land Use Regulations in effect on the Effective Date, including those Required 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 Required Approvals which, though approved on the Approval Date, are not effective until the Effective Date.
30. **“Final Map”** means a final parcel map or final tract map for the Development, as defined in the Subdivision Map Act and the Zoning Code.
31. **“General Plan”** means the General Plan of the City in effect on the Approval Date and as amended through the GPA.
32. **“Goodell Conveyance”** means the conveyance of the Goodell Property to either a governmental agency or a Qualifying Non-Profit Organization, such as the BCLT, acceptable to the City, for Open Space and Conservation Uses.
33. **“Goodell Option”** means Developer’s option to acquire the Goodell Property as described in Section 4.
34. **“Goodell Property”** means the approximately 6.2-acre parcel designated on Exhibit B as the “Goodell Property.”
35. **“GPA”** means the amendment of the General Plan through the City Council’s adoption of General Plan Amendment No. 16-002 for the Windward Property.
36. **“Implementation Documents”** means those documents needed to complete the Windward and Goodell Conveyances, as well as the Deed Restrictions.

37. **“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 Development. 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
38. **“LCPA”** means Local Coastal Program Amendment No. 16-002, as approved by the City and certified by the Coastal Commission on terms acceptable to Developer, and consisting of (1) an amendment to the Coastal Element of the City’s General Plan which functions as the Land Use Plan portion of the LCP, and (2) the “Windward Specific Plan,” comprised of a Zoning Text Amendment and a Zoning Map Amendment to the Implementation Plan portion of the Local Coastal Program.
39. **“Map”** means Tentative Tract Map No. 18060 for the Windward Property which was approved by the City Council on the Approval Date.
40. **“Minor Changes”** means any change to the Development 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 eliminate Developer’s obligation to make the Windward and Goodell Conveyances.
41. **“Mortgage”** means any mortgage, deed of trust, or other security device recorded against some or all of the Windward Property or improvements to the Windward Property for the purpose of securing a debt or other obligation.

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.

42. **“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.
43. **“Notice”** means any notice, demand, or correspondence required or permitted by this Agreement.
44. **“Open Space and Conservation Uses”** means, and is limited to, pedestrian trails, observation areas and platforms, interpretive signs and displays, native landscaping, trail fencing, habitat restoration, any additional uses set forth in 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, and any other open space, resource protection, and conservation uses that are later approved through an amendment of the LCP approved by the City and certified by the Coastal Commission.
45. **“Party”** or **“Parties”** means either City or Developer or both, as determined by the context.
46. **“Periodic Review”** means the review by the City of Developer’s good faith compliance with the terms of this Agreement pursuant to Section 6.
47. **“Planning Commission”** means the Planning Commission of the City.
48. **“Project Grading Permit”** means grading permits for the development of the Windward Residential Parcel (this is not intended to include permits related to studies, surveys, or architectural grading).
49. **“Qualifying Non-Profit Organization”** means a non-profit 501(c)3 organization that is BCLT or an accredited Land Trust.
50. **“Required Approvals”** means the following:
- City approvals:
 - a) Approval of Local Coastal Program Amendment No. 16-002 (the “LCPA”), consisting of General Plan Amendment No. 16-002 (the “GPA”) and Specific Plan No. 16, adopted through the approval of Zoning Map Amendment No. 16-003 and Zoning Text Amendment No. 16-004 (the “Specific Plan”).
 - b) Approval of and entry into this Agreement; and
 - c) Approval of Coastal Development Permit No. 16-018 (the “CDP”), consisting of Conditional Use Permit No. 16-035 (the “CUP”) and Tentative Tract Map No. 18060 (the “Map”).
 - Coastal Commission actions:
 - a) Certification of the LCPA, consisting of (1) an amendment to the Coastal Element of the City’s General Plan which functions as the Land Use Plan portion of the LCP, and (2) the “Windward Specific Plan,” comprised of a Zoning Text Amendment and a

Zoning Map Amendment to the Implementation Plan portion of the Local Coastal Program; and

b) To the extent, if any, required by Government Code Section 65869, approval of this Agreement.

51. **“Retained Property”** means any portion of the Windward Property not included within an Assignment, as set forth in Section 11.3.
52. **“Section”** refers to a numbered section of this Agreement, unless specifically stated to refer to another document or matter.
53. **“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 Property.
54. **“Settlement Program”** means the Windward Conveyance, the Goodell Conveyance, and the Development, collectively and to the full extent permitted by the Applicable Rules.
55. **“Specific Plan”** means Specific Plan No. 16 for the Windward Property, including future amendments to which Developer has consented in writing. The Specific Plan was adopted pursuant to Zoning Map Amendment No. 16-003 and Zoning Text Amendment No. 16-004.
56. **“Subsequent Development Approvals”** means all Development Approvals to which Developer has consented and which are approved, granted, or issued for the Development on or after the Approval Date, including, but not limited to, the CUP, the Map, and the CDP.
57. **“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.
58. **“Tentative Map”** means a tentative parcel map or tentative tract map, as defined in the Subdivision Map Act and the Zoning Code, for the Development.
59. **“Term”** means the term of this Agreement as set forth in Section 3.
60. **“Third-Party Action”** means any 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.
61. **“TPL”** means the Trust for Public Land.
62. **“TPL Option”** means the option agreement entered into between Developer and the Trust for Public Land for the purchase of the entire Windward Property and the Goodell Property, subject to the contingencies contained in the Settlement.

- 63. **“Transferred Property”** means all or that portion of the Windward Property which is the subject of an Assignment by Developer.
- 64. **“Windward Conveyance”** means the conveyance of that portion of the Windward Property other than the Windward Residential Parcel to either a governmental agency or a Qualifying Non-Profit Organization, such as the BCLT, acceptable to the City, for Open Space and Conservation Uses.
- 65. **“Windward Open Space Parcel”** means that portion of the Windward Property identified as the “Windward Open Space Parcel” on Exhibit B.
- 66. **“Windward Property”** means the approximately 5-acre parcel of land which is more particularly described in Exhibit A and depicted as the “Windward Property” on Exhibit B.
- 67. **“Windward Residential Parcel”** refers to that portion of the Windward Property designated on Exhibit B as “Windward Residential Parcel.”
- 68. **“Zoning Code”** means the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).
- 69. **“Zoning Map Amendment”** means Zoning Map Amendment No. 16-003.

EXHIBIT A

WINDWARD PROPERTY LEGAL DESCRIPTION

PROPOSED TRACT NO. 17294, BEING A SUBDIVISION OF:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 5 SOUTH, RANGE 11 WEST, IN THE RANCHO LA BOLSA CHICA, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 13 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT CERTAIN 6.2 ACRE PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED TO DONALD E. GOODELL RECORDED NOVEMBER 5, 1959 IN BOOK 4960, PAGE 87 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE SOUTH 89° 58' 30" WEST 450.00 FEET ALONG THE NORTHERLY LINE OF SAID 6.2 ACRE PARCEL TO A ANGLE POINT IN PARCEL 2 OF CERTIFICATE OF COMPLIANCE NO. 92-01 RECORDED SEPTEMBER 2, 1992 AS INSTRUMENT NO. 92-589755 OF SAID OFFICIAL RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID LAST ABOVE MENTIONED PARCEL 2, THE FOLLOWING COURSES: CONTINUING SOUTH 89° 58' 30" WEST 323.00 FEET AND NORTH 34° 02' 08" WEST 604.67 FEET TO A LINE PARALLEL WITH AND 30.00 FEET SOUTHERLY OF THE CENTERLINE OF LOS PATOS AVENUE AS SHOWN ON A MAP FILED IN BOOK 92, PAGES 19 THROUGH 28 OF RECORD OF SURVEYS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG SAID PARALLEL LINE AND ITS EASTERLY PROLONGATION, THE FOLLOWING COURSES: SOUTH 89° 21' 32" EAST 639.80 FEET AND SOUTH 89° 35' 35" EAST 90.18 FEET; THENCE NORTH 0° 10' 29" EAST 30.00 FEET TO THE WESTERLY PROLONGATION OF THE SOUTHERLY LINES OF TRACT NO. 10853 RECORDED IN BOOK 513, PAGES 14 THROUGH 15 AND TRACT NO. 5792 RECORDED IN BOOK 220, PAGES 8 THROUGH 11, BOTH OF SAID MISCELLANEOUS MAPS; THENCE SOUTH 89° 35' 35" EAST 383.00 FEET ALONG SAID WESTERLY PROLONGATION TO THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID 6.2 ACRE PARCEL; THENCE SOUTH 0° 10' 29" WEST 520.23 FEET ALONG SAID NORTHERLY PROLONGATION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF HUNTINGTON BEACH RECORDED FEBRUARY 28, 2000 AS INSTRUMENT NO. 20000104631 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN TRACT NO. 15734, AS SHOWN ON A MAP RECORDED IN BOOK 797, PAGES 40 TO 42 INCLUSIVE, OF SAID MISCELLANEOUS MAPS.

APN: 110-016-35

EXHIBIT B

DEPICTION OF THE WINDWARD PROPERTY, THE WINDWARD RESIDENTIAL PARCEL, THE WINDWARD OPEN SPACE PARCEL, AND THE GOODELL PROPERTY



Windward Development Agreement

Exhibit B

City of Huntington Beach



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August 2017

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EXHIBIT C

GOODELL PROPERTY LEGAL DESCRIPTION

COMMENCING AT THE POINT OF INTERSECTION OF THE CENTER LINES OF BOLSA CHICA STREET AND LOS PATOS AVENUE, BOTH 60 FEET WIDE, AS SAID STREETS ARE SHOWN ON THE MAP OF TRACT 86, BLOCK 20, COAST BOULEVARD FARMS, RECORDED IN BOOK 10, PAGES 35 AND 36, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE SOUTH $0^{\circ} 42' 01''$ EAST 523.80 FEET; THENCE NORTH $89^{\circ} 06' 00''$ EAST 23.00 FEET TO THE TRUE POINT OF BEGINNING. THENCE CONTINUING NORTH $89^{\circ} 06' 00''$ EAST 450.00 FEET; THENCE SOUTH $0^{\circ} 42' 01''$ EAST 600 FEET; THENCE SOUTH $89^{\circ} 06' 00''$ WEST 450 FEET: THENCE NORTH $0^{\circ} 42' 01''$ WEST 600 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 6.20 ACRES.

APN: 110-016-18