

ORDINANCE NO. 2024-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING OF THE SECOND AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA2012-003 FOR THE UPTOWN NEWPORT PROJECT LOCATED AT 4311-4321 JAMBOREE ROAD (PA2024-0078)

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, an application was filed by TSG-Parcel 1, LLC. (“Applicant”) with respect to a 25.05-acre property located at 4311-4321 Jamboree Road, legally described as Parcels 1 through 4 of Parcel Map No. 2013-108 (“Property”);

WHEREAS, the Applicant proposes to amend Development Agreement No. DA2012-003 (“DA”), to allow excess park in-lieu fee credits to be applied towards applicable public benefit fee obligations as specified in the DA for residential projects located within the Uptown Newport Planned Community (“Project”);

WHEREAS, the Property is designated Mixed-Use Horizontal 2 (MU-H2) by the General Plan Land Use Element and located within the Uptown Newport Planned Community Zoning District (PC-58);

WHEREAS, the Property is not located within the coastal zone; and therefore, a coastal development permit is not required;

WHEREAS, the Newport Beach City Council (“City Council”) adopted Ordinance No. 2013-5 on March 12, 2013, approving the Uptown Newport Planned Community Development Plan (“Uptown Newport PC”);

WHEREAS, the City Council adopted Ordinance No. 2013-6 on March 12, 2013, approving the DA for the development of up to 1,244 residential dwelling units, 11,500 square feet of retail commercial uses and 2.05 acres of parklands which took effect on April 11, 2013;

WHEREAS, the DA is dated March 12, 2013, for reference purposes, and was recorded in the Official Records of Orange County on March 26, 2013, as document number 2013000180939;

WHEREAS, the Applicant transferred ownership of individual parcels that comprise the entire Property on February 14, 2014, and assigned the DA as it pertains to Parcel 1 to TSG-Parcel 1, LLC, a Delaware limited liability company; as it pertains to Parcels 2 and 4 to Uptown Newport Jamboree, LLC, a Delaware limited liability company; and as it pertains to Parcel 3 to TPG/TSG Venture I Acquisition, LLC, a Delaware limited liability company (“Landowners”) with all Landowners agreeing to be bound by all the terms, covenants and conditions relating to the Property;

WHEREAS, the City Council adopted Ordinance No. 2015-11 on May 12, 2015, approving the First Amendment to the DA to amend the following sections:

- a. Section 3.1: To defer the payment of public benefit fees to the City from the issuance of building permits to the issuance of certificates of occupancy; and
- b. Section 3.2.1: To defer the payment of fees in-lieu of parkland dedication for all units at the issuance of the first building permit for any unit to the issuance of building permits on a per-unit basis;

WHEREAS, the City Council adopted Resolution No. 2017-23 on April 11, 2017, approving a park in-lieu fee credit in the amount of \$7,144,965 for the provision of private recreational facilities and public recreational open space areas within the One Uptown Newport apartment project and an estimate of public park construction costs of Phase 1 park in Uptown Newport PC;

WHEREAS, the Community Development Director approved Staff Action Letter (PA2021-165) on October 27, 2021, identifying residual park fees and park in-lieu fee credits for the Phase 1 park construction costs, the provision of public recreational open space areas around and between the Parkhouse Residences and the Uptown Newport Residences projects and their individual private recreational facilities with the total estimated remaining maximum park in-lieu fee credit that can be given and applied towards future park in-lieu fee payment within Uptown Newport PC of approximately \$824,637;

WHEREAS, the Deputy Community Development Director issued a letter on January 20, 2022, denying a request to have the remaining park in-lieu fee credits available from Uptown Newport PC Phase 1 development in the amount of \$824,637 to be applied towards public benefit fees to be paid by the Parkhouse Residences project as the DA does not provide for any credit to public benefit fees;

WHEREAS, Section 3.1 of the DA provides for public benefit fees to be adjusted annually based on a consumer price index factor but does not provide for any credit to public benefit fees;

WHEREAS, the Applicant submitted an application on May 7, 2024, requesting an amendment to the DA to allow park in-lieu fee credits be applied towards public benefit fees;

WHEREAS, the Second Amendment to the Development Agreement (“Second Amendment”), which would authorize park in-lieu fee credits to be applied towards public benefit fees in certain limited circumstances, is attached hereto as Exhibit “A,” and incorporated herein by reference;

WHEREAS, a public hearing was held by the Planning Commission on September 5, 2024, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of the time, place, and purpose of the hearing was given in accordance with Government Code Section 54090 *et seq.* (“Ralph M. Brown Act”) and Chapters 15.45 (Development Agreements) and 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2024-018 by a unanimous vote (6 ayes, 1 absent), recommending the City Council approve the Project;

WHEREAS, a public hearing was held by the City Council on October 8, 2024, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act, Chapters 15.45 (Development Agreements) and 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing;

WHEREAS, the City Council finds the Second Amendment is consistent with the General Plan and the Uptown Newport Planned Community Development Plan (PC-58), Municipal Code and Subdivision Map Act as the Second Amendment will continue to allow the development of a mixed-use community, containing a mix of housing types, supporting retail and active parklands, consistent with the land uses, densities and intensities of the Uptown Newport PC which is the zoning document for the Project, the General Plan Land Use designation of Mixed-Use Horizontal-2 and the Airport Business Area Integrated Conceptual Development Plan;

WHEREAS, the City Council finds the changes included in the Second Amendment allow the Landowners, in the event the Landowners complete parkland dedication and improvements which consist of on-site parks, public recreational open space areas and private recreational amenities, and credits have been identified in connection with the completion of those parkland dedication and improvements that exceed any remaining park in-lieu fee requirements (“unused credits”), to submit an application to the City to use the unused credits, or a portion thereof, towards the Landowners’ public benefit fee obligations set forth in Section 3.1 or Section 3.2.1 of the DA; and

WHEREAS, the City Council finds these changes do not add any lots, units, building sites or structures to the Project and does not change the approved design or uses allowed by the Uptown Newport PC. The park in-lieu fee payments and parkland dedication will remain a requirement for Uptown Newport PC.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The Second Amendment to Development Agreement No. DA2012-003, which is attached hereto as Exhibit “A,” and incorporated herein by reference, is hereby approved.

Section 2: All significant environmental concerns for the Project have been addressed in the previously certified Environmental Impact Report No. ER2012-001 (SCH No. 2010051094), First Addendum No. ER2012-001, and Second Addendum No. ER2020-001, in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 21000 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6, Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Project will not result in new or increased environmental impacts.

The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 8th day of October, 2024, and adopted on the 22nd day of October, 2024, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment: Exhibit A – Second Amendment to Development Agreement

Exhibit A

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

**TSG-PARCEL 1, LLC, TPG/TSG VENTURE I ACQUISITION, LLC, AND
UPTOWN NEWPORT JAMBOREE, LLC**

CONCERNING UPTOWN NEWPORT PROPERTY

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to Newport Beach Municipal Code Chapter 15.45 and California Government Code sections 65864-65869.5)

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Second Amendment**”) is dated for reference purposes as of the ____ day of _____, 2024 (the “**Amendment Date**”), and is being entered into by and between the CITY OF NEWPORT BEACH (“**City**”), on the one hand, and TSG-Parcel 1, LLC, a Delaware limited liability company, TPG/TSG Venture I Acquisition, LLC, a Delaware limited liability company and Uptown Newport Jamboree, LLC, a Delaware limited liability company (collectively, the “**Landowner**” or “**Landowners**”), on the other. City and Landowners are sometimes collectively referred to in this Second Amendment as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Uptown Newport LP, a Delaware limited partnership was the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California commonly referred to as Uptown Newport, located at 4311-4321 Jamboree Road (Assessor Parcel Nos. 445-131-02 and 445-131-03) (the “**Property**”).

B. City and Uptown Newport LP entered into that certain Development Agreement dated March 12, 2013, for reference purposes and recorded in the Official Records of Orange County on March 26, 2013, as document number 2013000180939 (the “**Agreement**”). All terms not otherwise defined in this Second Amendment shall have the meanings given them in the Agreement.

C. Uptown Newport, LP transferred ownership of individual parcels that comprise the entire Property and assigned the Agreement as it pertains to Parcel 1 to TSG-Parcel 1, LLC, a Delaware limited liability company; as it pertains to Parcel 3 to TPG/TSG Venture I Acquisition, LLC, a Delaware limited liability company; and as it pertains to Parcels 2 and 4 to Uptown Newport Jamboree, LLC, a Delaware limited liability company as recorded in the Official Records of Orange County on February 14, 2014, as document numbers 2014000060354 and 2014000060352 (the “**Partial Assignment**” or “**Partial Assignments**”).

D. With the transfer of ownership of Parcels 1-4, the legal description of the Property as described in Exhibit “A” to the Agreement remains the same, however, new street addresses and Assessor Parcel Nos. were established as set forth in Exhibit “C” to this Second Amendment, which is attached hereto and incorporated herein by reference.

E. The City Council adopted Ordinance No. 2015-11 on May 12, 2015, approving the First Amendment to Development Agreement (“**First Amendment**”) adjusting provisions related to the timing of payment of public benefit fees and park in-lieu fees which was recorded in the Official Records of Orange County on July 6, 2015, as document number 2015000349840.

F. The Parties now wish to enter into this Second Amendment to allow the Landowners, upon completion of parkland dedication and improvements, to submit an

application to the City to use any unused fee credits, or a portion thereof, towards Landowners' Public Benefit Fee obligations.

G. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "**Development Agreement Ordinance**"). This Second Amendment is consistent with the Development Agreement Ordinance.

H. This Second Amendment is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "Mixed-Use Horizontal-2," Airport Business Area Integrated Conceptual Development Plan, and the Uptown Newport Planned Community Development Plan.

I. On September 5, 2024, the Planning Commission held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Landowners, and members of the public. On September 5, 2024, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the Planning Commission adopted Resolution No. PC2024-018, recommending the City Council approve this Second Amendment.

J. In recognition of the significant public benefits that the Agreement, as amended, provides, the City Council has found that this Second Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement, the First Amendment and this Second Amendment; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the final Environmental Impact Report (No. ER2012-001) (SCH#2010051094) ("**EIR**") that has been certified by the City Council on or before the Agreement Date, which analyzed the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 of the Newport Beach Municipal Code.

K. On October 8, 2024, the City Council held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Landowners, and members of the public. On October 22, 2024, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council held second reading and adopted Ordinance No. 2024-____, finding the Second Amendment to be consistent with the City of Newport Beach General Plan and approving this Second Amendment.

AGREEMENT

NOW, THEREFORE, City and Landowners agree as follows:

1. A new Section 4.6 (Park In-Lieu Fee Credits) is hereby added to the Agreement as follows:

“4.6 Park In-Lieu Fee Credits.

Section 3.1 of this Agreement requires that a “Public Benefit Fee” be paid by Landowners to the City in the amount of Thirty-Two Thousand Five Hundred Dollars and 00/100 (\$32,500.00) for every residential unit in the Project, which is due and payable on a per-unit basis at the time of issuance of building permit or certificate of occupancy (timing for payment in Landowners’ discretion), which amount increases beginning on January 1, 2015, pursuant to the First Amendment to Development Agreement by the percentage increase in the CPI Index between the Effective Date (as that term is defined in this Agreement) and said January 1st date (the first “Adjustment Date”) and further subject to subsequent increases on January 1st of each following year based the percentage increase in the CPI Index in the preceding year.

In addition, Section 3.2.1 of this Agreement acknowledges that pursuant to Government Code Section 66477 and Chapter 19.52 of the Newport Beach Municipal Code, Landowners are required to construct certain park improvements and to pay parkland dedication in-lieu fees in connection with the Project and that Landowners are eligible to receive credits against the payment of park in-lieu fees to be used for the limited purpose as a credit against the Landowners’ park fee(s) and/or park dedication requirements in accordance with General Plan Policy LU 6.15.16 for Public Recreational Open Space Areas, Section 19.52.030(B) of the Municipal Code for On-Site Park construction and improvement costs, and Section 19.52.080 of the Municipal Code for Private Recreational Amenities.

In the event Landowners complete Park Land, also referred to as Parkland, Dedication and Improvements which consist of On-Site Parks, Public Recreational Open Space Areas and Private Recreational Amenities, and credits have been identified in connection with the completion of those park land dedication and improvements that exceed any remaining park in-lieu fee requirements, (the “Unused Credits”), Landowners may submit an application to the City to apply the Unused Credits, or a portion thereof, towards Landowners Public Benefit Fee obligations set forth in Section 3.1 or Section 3.2.1.

Upon the City’s receipt of a complete application and applicable fees including any additional requests for information that are deemed necessary by the City, the Community Development Director shall issue his or her decision within sixty (60) days. The Community Development Director’s decision shall be based on whether Landowners are in compliance with all obligations under this Agreement and/or condition(s) of approval for the Project, including completion of all On-Site Parks, Public Recreational Open Space Areas and Private Recreational Amenities, and payment of park in-lieu fees required under Section 3.2.1.

Notwithstanding the foregoing, Landowners understand and agree that the park land dedication fees collected pursuant to Government Code Section 66477 (Quimby Act), Chapter 19.52 of the Municipal Code and Section 3.2.1 of the

Agreement are only to be used for park-related purposes. Landowners understand and agree that only the Unused Credit that exceed all park in-lieu fee requirements are eligible as credits against the payment of park in-lieu fees required in Section 3.2.1.”

2. The City’s address set forth in Section 13.1 (Notices) of the Agreement is hereby amended as follows:

TO CITY: City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660
Attn: City Manager

With a copy to: City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660
Attn: City Attorney

3. All of the Recitals in this Second Amendment are incorporated into the Agreement. Exhibits A and B are attached to the original Agreement and Exhibit C, which is attached hereto and incorporated by reference to this Second Amendment. Exhibits A through C are incorporated by reference to the Agreement, First Amendment and Second Amendment as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property
C	Property Addresses and Assessor Parcel Numbers

4. **Full Force and Effect.** Except as modified by this Second Amendment, the First Amendment and Agreement shall remain in full force and effect.

5. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

6. **Counterparts.** This Second Amendment may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all Parties.

7. **Recordation**. The City Clerk of City shall record this Second Amendment in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.100. The date of this Second Amendment and the date of recordation of this Second Amendment shall not modify or amend the Effective Date or the Termination Date of the Agreement.

[SIGNATURE PAGE FOLLOWS]

Proposed

**LANDOWNERS SIGNATURE PAGE TO
SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

“LANDOWNERS”

UPTOWN NEWPORT JAMBOREE, LLC,
a Delaware limited liability company

Name: _____

Title: _____

Name: _____

Title: _____

TPG/TSG VENTURE I ACQUISITION, LLC,
a Delaware limited liability company

Name: _____

Title: _____

Name: _____

Title: _____

TSG-PARCEL 1, LLC,
a Delaware limited liability company

Name: _____

Title: _____

Name: _____

Title: _____

Proposed

**CITY SIGNATURE PAGE TO
SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

“CITY”

CITY OF NEWPORT BEACH

By: _____
Will O’Neill, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachment: Exhibit C - Property Addresses and Assessor Parcel Numbers

Proposed

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____ }

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____ }

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)

EXHIBIT C

PROPERTY ADDRESSES AND ASSESSOR PARCEL NUMBERS

APNs:

445-134-01 thru 16, 18 thru 34, and 36

445-133-07 and 08

Addresses:

4141 Jamboree

4201 Jamboree

4301 Jamboree

4311 Jamboree

4321 Jamboree

4251, 4261, 4271, 4281, 4291 Uptown Newport Drive

4288 Half Dome Place

Proposed