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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)

4613344

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.

OFFICE
OF THE CLERK-RECORDER
CITY OF NEWPORT BEACH

2015 JUL 20 PM 2:03

RECEIVED

FIRST 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

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

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

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “**First Amendment**”) is dated for reference purposes as of the 28 day of April, 2015 (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 First Amendment as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Landowners are the owners 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 (APN Nos. 445-131-02 and 445-131-03), and generally located on the west side of Jamboree Road, between Birch Street and Fairchild Road (the “**Property**”). The Property is more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by reference.

B. City and Uptown Newport LP, a Delaware limited partnership, 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 First Amendment shall have the meanings given them in the Agreement.

C. On or around February 14, 2014, Uptown Newport, LP, a Delaware limited partnership, transferred ownership of the Property and assigned the Agreement to 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.

D. Under the Agreement, Landowners must pay a Public Benefit Fee to the City in the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00), as adjusted according to the Agreement, per residential dwelling unit developed as part of the Project at the time each residential building permit is issued. The Parties now desire to amend the Agreement as set forth in this First Amendment to require payments of the Public Benefit Fee at the issuance of building permits, or at Landowner’s option, at the issuance of certificates of occupancy per residential dwelling unit.

E. In addition to constructing and improving two (2) approximately one (1) acre parks, Landowners are also required to pay certain parkland dedication in-lieu fees to the City, based on the pro-rated gross acreage of the final map minus any parkland dedication and applicable credits, for all units included on a final map at the time that the first building permit is issued for a unit on that final map. The Parties now desire to amend the Agreement as set forth in

this First Amendment to allow the Landowner, as an alternative, to defer payment of all or a portion of the parkland dedication in-lieu fees, but an interest charge will accrue and be applied at time of payment(s), as more specifically described below. Additionally, the Parties now desire to amend the Agreement as set forth in this First Amendment to require payment of parkland dedication in-lieu fees, as applicable, on a per-unit basis at the issuance of a building permit for individual buildings in the Project.

F. 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 First Amendment is consistent with the Development Agreement Ordinance.

G. This First 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.

H. On March 19, 2015, the Planning Commission held a properly noticed public hearing on this First Amendment and considered the testimony and information submitted by City staff, Landowners, and members of the public. On March 19, 2015, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the Planning Commission adopted Resolution No. 1976, recommending the City Council approve this First Amendment.

I. In recognition of the significant public benefits that the Agreement, as amended, provides, the City Council has found that this First Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement and this First 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 and City of Newport Beach Municipal Code chapter 15.45.

J. On April 28, 2015, the City Council held a properly noticed public hearing on this First Amendment and considered the testimony and information submitted by City staff, Landowners, and members of the public. On May 12, 2015, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council held second reading and adopted Ordinance No. 2015-8, finding the First Amendment to be consistent with the City of Newport Beach General Plan and approving this First Amendment.

AGREEMENT

NOW, THEREFORE, City and Landowners agree as follows:

1. **Public Benefit Fee.** Section 3.1 is hereby amended in its entirety to read as follows:

“As consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) per residential dwelling unit Developed as part of the Project, with the unpaid balance of said Public Benefit Fee increased beginning on January 1, 2015, by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Landowner shall pay the Public Benefit Fee on a per unit basis at the time each residential building permit is issued, or at Landowner's option and in Landowner's sole discretion, at the time each certificate of occupancy is issued. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. Landowner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Landowner's vesting rights to be acquired hereunder, and that Landowner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 et seq.), or otherwise. In addition to any other remedy set forth in this Agreement for Landowner's default, if Landowner shall fail to timely pay any portion of the Public Benefit Fee when

due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.”

2. **Park Fees.** Section 3.2.1, subdivision (iv), is hereby amended in its entirety to read as follows:

“In-lieu of parkland dedication fees (“Park In-Lieu Fees”) shall be paid to the City prior to the issuance of building permits. Payment of Park In-Lieu Fees shall be made for all units included on any final map(s) at the time that the first building permit is issued for any single unit included on a final map(s). However, at Landowner’s option and in Landowner’s sole discretion, Landowner may elect to defer payment(s) of Park In-Lieu Fees for some or all units contained on any final map(s) (the “Deferred Units”) until building permits are sought for the building or buildings containing those Deferred Units. In such cases, Landowner shall pay, in addition to the Park In-Lieu Fees for the Deferred Units, an interest charge in the amount of four percent (4%) per annum for any Deferred Units in Phase 1 (as Phase 1 is shown on the approved phasing plan for the Project), and five percent (5%) per annum for any Deferred Units in Phase 2 (as Phase 2 is shown on the approved phasing plan for the Project). The period in which the interest charge(s) shall apply to any particular Deferred Units shall begin at Landowner’s election to defer payment of Park In-Lieu Fees for those Deferred Unit(s), and shall continue to accrue on a per annum basis until such time that Landowner actually pays the Park In-Lieu Fees for those particular unit(s) (the “Deferral Period”). The Park In-Lieu Fees for any Deferred Units shall be paid on a per-unit basis no later than upon the issuance of a building permit per individual building(s) in the Project. For example, if a building permit is sought for a building in Phase 1 that includes 100 Deferred Units, Park In-Lieu Fees plus the interest charge of four percent (4%) per annum that accrued over the Deferral Period for those Deferred Units must be paid for those 100 Deferred Units before the building permit for that building can be issued. As another example, if a building permit is sought for a building in Phase 2 that includes 300 Deferred Units, Park In-Lieu Fees plus the interest charge of five percent (5%) per annum that accrued over the Deferral Period for those Deferred Units must be paid for those 300 Deferred Units before the building permit for that building can be issued. The fee amount for Park In-Lieu Fees shall be calculated on a per-unit basis based on the pro-rated gross acreage of the final map minus any parkland dedication and applicable credits for recreational improvements approved by the City pursuant to the General Plan and the Subdivision Code within the area encompassed by the final map, then dividing the balance by the number of units contained in the area encompassed by that final map. For example, if a final map encompasses 10 acres of the 25.05 acre planned community (or 39.92% of the total acreage), the amount of the Park In-lieu Fees required to be paid on a per-unit would be 39.92% of the 13.62 acre parkland dedication requirement minus any parkland dedication and any approved credits for recreational improvements, divided by the number of units contained within that final map.”

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

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

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

6. **Recordation.** The City Clerk of City shall record this First 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 First Amendment and the date of recordation of this First Amendment shall not modify or amend the Effective Date or the Termination Date of the Agreement.

[SIGNATURE PAGE FOLLOWS]

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

“LANDOWNERS”

UPTOWN NEWPORT JAMBOREE, LLC,
a Delaware limited liability company

By: John W. Sautry

Name: JOHN SAUTRY

Title: EXECUTIVE VICE PRESIDENT

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

By: Jon Demorest

Name: Jon Demorest

Title: Executive Vice President

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

By: John W. Sautry

Name: JOHN SAUTRY

Title: EXECUTIVE VICE PRESIDENT

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 Orange)

On May 26, 2015, before me, TERRI HOVDESTAD, a Notary Public, personally appeared John M. Santry who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person 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: [Handwritten Signature]



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)

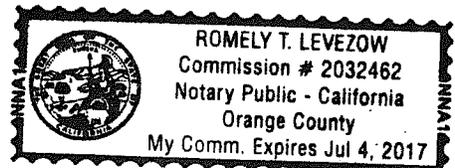
COUNTY OF Orange)

On June 10, 2015, before me, Romely T. Levezow, a Notary Public, personally appeared Jon Demorest who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature(s) on the instrument the person, or the entity upon behalf of which the person 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: [Handwritten Signature]

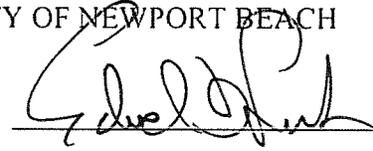


**CITY SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“CITY”

CITY OF NEWPORT BEACH

By: _____



Edward D. Selich, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

 (for)

Aaron C. Harp, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 Orange)

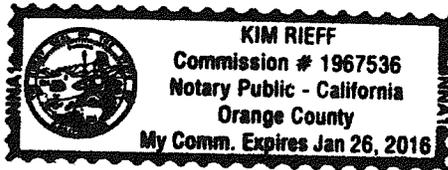
On May 15, 2015 before me, Kim Rieff, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Edward D. Selich
Name(s) of Signer(s)

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 signature(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 Kim Rieff
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Being a subdivision of Lots 1 and 2 of Tract No. 7953, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 310, Pages 7 to 11 inclusive, of Miscellaneous Maps, recorded of said County.