

**REIMBURSEMENT AGREEMENT  
CITY OF LAKE ELSINORE (SUMMERLY)  
COMMUNITY FACILITIES DISTRICT NO. 2006-1  
IMPROVEMENT AREA II  
CHANGE PROCEEDINGS**

THIS REIMBURSEMENT AGREEMENT (this "Agreement") dated as of October 1, 2016 is entered into by and between the City of Lake Elsinore, a general law city organized and existing under the laws and constitution of the State of California (the "City"), and McMillin Summerly, LLC, a Delaware limited liability company (the "Owner").

***RECITALS:***

A. The Owner owns approximately 33 acres of land described in Exhibit A attached hereto, which land is included within Improvement Area II ("Improvement Area II") of City of Lake Elsinore Community Facilities District No. 2006-1 (Summerly) (the "District") previously formed by the City pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*) (the "Act");

B. The Owner desires to amend the rate and method of apportionment of special tax for Improvement Area II pursuant to the Act (such proceedings referred to herein as the "Change Proceedings").

B. The City and the Owner are desirous of entering into this Agreement in order to provide a mechanism by which the Owner may advance certain funds related to the cost of the Change Proceedings, such costs to be reimbursed to the Owner for the amounts advanced hereunder, from proceeds of bonds issued by the District for Improvement Area II, if any.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Change Proceedings.

(a) At the request of the Owner, the City will undertake to complete the Change Proceedings. The City will retain, at the Owner's expense, the necessary consultants to analyze the proposed Change Proceedings, including an engineer, special tax consultant, financial advisor, bond counsel, market absorption consultant, appraiser and other consultants deemed necessary by the City. In addition, City staff time spent in connection with the Change Proceedings shall be at Owner's expense.

(b) In order to begin the process of analyzing the Change Proceedings, the Owner has advanced to the City a sum totaling \$35,000. From time to time, the Owner shall make additional advances to the City within 15 days following receipt from the City of a request for an additional advance to cover the costs of the Change Proceedings. In the event the Owner does not deliver the requested amount to the City within such 15-day period, the City will have no obligation to proceed

with the analysis unless and until such additional advance is received. The Owner shall have the right to notify the City at any time, in writing, of its intention to abandon the Change Proceedings. Upon receipt of such notice, the City shall instruct its consultants to cease work as soon as practicable. The Owner shall be responsible to pay all costs and expenses incurred by the City or any City consultant or advisor prior to the date on which the City's consultants are notified of the Owner's notice of abandonment. Notwithstanding a decision of the Owner to abandon the Change Proceedings, the City may, in its sole discretion, elect to proceed with the Change Proceedings with funds other than those of the Owner; provided, however, that, in executing this Agreement, the Owner shall not be deemed to have waived their right to object to the Change Proceedings.

(c) The City will provide to the Owner on request a summary of how the advances have been spent and the unexpended balance remaining. The amounts advanced by the Owner will be reimbursable to the Owner, without interest, from the proceeds of bonds issued by the District, if any. In the event that bonds are not issued to provide a source of reimbursement to the Owner, the City shall have no liability to the Owner to reimburse them for any of amounts previously advanced by the Owner and expended by the City in accordance with this Agreement.

3. Reimbursement Procedure. The City shall return any funds which have been advanced by the Owner which are not expended on the purposes set forth in Section 2 above. Such returned funds shall be without interest.

4. Abandonment of Change Proceedings. The Owner understands that the undertaking of the Change Proceedings shall be in the sole discretion of the City. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to undertake the Change Proceedings or to issue any bonds. The City shall have no liability to Owner for its decision not to undertake the Change Proceedings or issue bonds.

5. Indemnification and Hold Harmless. The Owner hereby assumes the defense of, and indemnifies and saves harmless, jointly and severally, the City and each of its officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or arising out of any acts or omissions taken by the Owner or any of the Owner's officers, employees, contractors and agents with respect to the Change Proceedings.

6. Notices. Any notice to be provided pursuant to this Agreement shall be delivered to the following addresses:

Owner	McMillin Summerly, LLC 4343 Von Karman Avenue Newport Beach, CA 92660 Attention: Brian Milich Telephone: (949) 955-0984 Email: bmilich@pacv.com
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City:	City of Lake Elsinore 130 South Main Street Lake Elsinore, CA 92530
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Attn: Assistant City Manager  
Telephone: (951) 674-3124  
Email: jsimpson@lake-elsinore.org

With a copy to: Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660  
Attention: Brian Forbath, Esq.  
Telephone: (949) 725-4193  
Email: bforbath@sycr.com

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

7. Assignment. The Owner may not assign its interest in this Agreement without the prior written consent of the City.

8. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent permitted by law.

9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein.

10. Amendments. This Agreement may be amended or modified only by written instrument signed by all parties.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

13. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Owner, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

15. Termination. This Agreement shall terminate and be of no further force and effect on October 1, 2023 unless expressly amended by the parties; provided, however, that the Owner's obligations under Section 5 shall survive the termination and the City's obligation to provide reimbursement in accordance with Section 3 for expenses incurred prior to the termination date shall also survive termination.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF LAKE ELSINORE, a political subdivision  
of the State of California

By: \_\_\_\_\_  
Assistant City Manager

ATTEST:

By: \_\_\_\_\_  
Susan M. Domen, MMC, City Clerk

MCMILLIN SUMMERLY, LLC, a Delaware limited  
liability company

By: PV Development Management LLC, a Delaware  
limited liability company, as property manager

By: Pacific Ventures Management LLC, a Delaware  
limited liability company, its Manager

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

CITY ATTORNEY

By: \_\_\_\_\_  
Barbara Z. Leibold, City Attorney

## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

Real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

Assessor's Parcel Nos:

371-040-014

371-040-017

371-040-018

371-040-038