

**FIRST AMENDMENT TO
AMENDED AND RESTATED
PARK
IMPLEMENTATION AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED PARK IMPLEMENTATION AGREEMENT (“First Amendment”), dated for reference purposes as of June 4, 2018 is entered into by and between the City of Lake Elsinore, a California municipal corporation (“City”), on the one hand, and **MCMILLIN SUMMERLY, LLC**, a Delaware limited liability company (“Summerly”) and successor in interest to Lang-CP Lake Elsinore, LLC (“Laing”), and **VAN DAELE DEVELOPMENT CORPORATION**, a California corporation and General Contractor licensed under California law (“Substitute Contractor”) on the other hand, (hereinafter jointly referred to as “Developer”). City and Developer are referred to collectively as the “Parties.”

RECITALS

A. City and Developer entered into that certain Amended and Restated Park Implementation Agreement dated April 10, 2015 (the “Agreement”). Unless otherwise defined herein, capitalized terms as used in this First Amendment shall have the same meaning as the Agreement. The Agreement as amended by this First Amendment shall hereinafter be referred to as the “Amended Agreement.”

B. Pursuant to that certain Contractor Substitution Agreement dated June 20, 2016, Van Daele Development Corporation was substituted as the Contractor under the Agreement in place of McMillin Real Estate Services, L.P.

C. Summerly and City have received questions and requests for clarification by merchant builders acquiring portions of the Summerly Project from Summerly relating to the interpretation of the Agreement.

D. The Parties desire to enter into this First Amendment in order to clarify and carry out the provisions of the Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. The following subparagraph is added to Section 1.6 of the Amended Agreement:

“d. Termination of In Lieu Credits; Issuance of Building Permits. Notwithstanding the foregoing, and except for Permitted Delays under Section 4.8 of the Agreement, in the event Developer fails to complete the Phase III Park Improvements in accordance with the Schedule of Performance and Phasing, but in any event not later than March 1, 2020, un-utilized Conditional In Lieu Credits for Phase III Park Improvements shall be suspended and City may withhold issuance of building

permits in the Project until such time as (i) the Phase III Park Improvements are completed, or (ii) Developer obtains performance and payment bonds in favor of the City in an amount equal to the estimated cost of the Phase III Park Improvements yet to be completed or such other assurances, including alternative form of security as may be approved by City at its reasonable discretion. All bonds required or permitted under this Amended Agreement shall be in a form satisfactory to City, issued by a corporate surety licensed to transact surety business in the state of California.”

2. The following subsection is added to Section 1 of the Agreement:

“Section 1.8. Permitting and Occupancy

Building permits issued on the basis of Conditional In-Lieu Credits may not be denied the City’s authorization (building permit sign-off) allowing for occupancy on the basis of a Developer default under this Amended Agreement, including but not limited to a failure to complete construction of the Multi-Use Park Improvements within the time set forth in the Schedule of Performance and Phasing, or an Event of Default.”

3. Section 3.1 of the Agreement is deleted in its entirety and replaced with the following:

“Section 3.1. Defaults--General

a. Default. Failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Amended Agreement constitutes a “default” under this Amended Agreement.

b. Notice of Default; Event of Default. An injured party shall give written notice of a default to the party in default, specifying in reasonable detail the default complained of by the injured party. The failure by the defaulting party to cure the default described in the written notice, in the manner specified below, shall constitute an “Event of Default.” Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the date of default.

c. Opportunity to Cure. A defaulting party may cure a default in any of the following manners:

(i) by immediately commencing to cure, correct or remedy such default upon receiving notice thereof, and completing such cure, correction or remedy described in the notice within 30 days of receipt thereof; or

(ii) in the case of a default not susceptible to cure within 30 days of receipt of the notice, by delivering a detailed written statement of the steps that the defaulting party intends to take to cure the noticed default (a “Cure Plan”) to the injured party, within 25 days of receipt of the notice, acceptable to the injured party in its reasonable business judgment. After delivery of the Cure Plan, the injured party shall thereafter have 5 days to accept, reject, or invite further discussions regarding the Cure Plan. The injured party’s failure to respond within 5 days shall constitute acceptance of the Cure Plan. Each day spent pursuing “further discussions” of the Cure Plan shall not count against the cure period. The Cure Plan shall require the default to be cured in a reasonable time given the

nature of the default, but in no event longer than ninety (90) days. After acceptance of the Cure Plan, the defaulting Party shall promptly commence to cure, correct, or remedy the default in accordance with the Cure Plan and thereafter diligently prosecute such cure, correction, or remedy to completion. Upon completion of the Cure Plan, the default specified in the written notice is deemed cured; or

(iii) in the case of a Developer default for failing to complete the Phase III Park Improvements in accordance with the Schedule of Performance and Phasing, but in any event not later than March 1, 2020 (subject to Permitted Delays), by obtaining performance and payment bonds in favor of the City in an amount equal to the estimated cost of the Phase III Park Improvements yet to be completed or such other assurances, including alternative form of security as may be approved by City at its reasonable discretion. All bonds required or permitted under this Amended Agreement shall be in a form satisfactory to City, issued by a corporate surety licensed to transact surety business in the state of California.

c. Pre-requisites to Legal Action. Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default has occurred.”

4. Except as amended by this First Amendment the terms, conditions and provisions of the Agreement shall remain in full force and effect.
5. This First Amendment shall be effective on the date of execution by the last Party to so execute this First Amendment (“Effective Date”).

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this **FIRST AMENDMENT TO AMENDED AND RESTATED PARK IMPLEMENTATION AGREEMENT** as of the respective date set forth below to be effective as of the Effective Date.

Dated: 6/5/2018 | 11:16 AM PDT
_____, 2018

“CITY”

CITY OF LAKE ELSINORE,
a California municipal corporation

DocuSigned by:
By: Grant Yates

AEE076A9E2464F...
Grant Yates, City Manager

ATTEST:

DocuSigned by:
By: Susan M. Domen

80F7D74329C1432...
Susan M. Domen, MMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: Barbara Leibold

A5086D9096AF548C...
Barbara Zeld Leibold, City Attorney

Dated: 6/5/2018 | 11:16 AM PDT
_____, 2018

“SUMMERLY”

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

DocuSigned by:
By: Brian Milich

9C2040B8C901482...
Name: Brian Milich

Title: VP

“SUBSTITUTE CONTRACTOR”

VAN DAELE DEVELOPMENT CORPORATION,
a California corporation

DocuSigned by:
By: [Signature]

7BDEED9CB6F0349D...
Name: Michael C. van Daele

Title: COO