

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

THIS SECOND AMENDMENT TO AMENDED AND RESTATED PARK IMPLEMENTATION AGREEMENT (“Second Amendment”), dated for reference purposes as of January 1, 2019 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 (“Van Daele”) on the other hand, (hereinafter jointly referred to as “Developer”). City and Developer are referred to collectively as the “Parties.”

RECITALS

A. City, Summerly and McMillin Real Estate Services, L.P. have previously entered into that certain Amended and Restated Park Implementation Agreement dated April 10, 2015 (the “Agreement”), which Agreement was amended by that certain First Amendment to Amended and Restated Park Implementation Agreement dated June 4, 2018 between City, on the one hand, and Summerly and Van Daele (as substitute contractor for McMillin Real Estate Services, L.P.) on the other hand. The Agreement as amended by the First Amendment shall hereinafter be referred to as the “First Amended Agreement.” The First Amended Agreement as amended by this Second Amendment shall hereinafter be referred to as the “Second Amended Agreement.” Unless otherwise defined herein, capitalized terms as used in this Second Amendment shall have the same meaning as the First Amended Agreement.

B. The Parties desire to enter into this Second Amendment in order to modify the Design for the construction of the Phase 3 Park Improvements, identify the obligations of the Parties with respect to such modification, establish rights and responsibilities for modification costs and savings, and make necessary changes in the Schedule of Performance.

AGREEMENT

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

1. Exhibit “A” to the First Amended Agreement, “Multi-Use Park Schedule of Performance and Phasing,” is deleted in its entirety and replaced with Exhibit “A-1” attached hereto and incorporated herein by reference.
2. That portion of Exhibit “C” to the First Amended Agreement comprising the Phase 3 Design is hereby modified by the Phase 3 Design as shown on Exhibit “C-1” attached hereto and incorporated herein by reference.

3. Exhibit “E”, the Estimate of Modification Costs and Modification Savings (as those terms are hereinafter defined), attached hereto and incorporated herein by reference, is hereby added to the First Amended Agreement.

4. The following paragraphs are added to Section 2.3 of the First Amended Agreement:

Notwithstanding anything to the contrary in the First Amended Agreement, City shall reimburse Summerly for all Modification Costs (as such term is defined below) as set forth in this Section 2.3.

For purposes of this Agreement, the term “Modification Costs” means the actual incremental increase in costs incurred by Summerly in connection with the modification of the Design of the Phase 3 Park Improvements, including, without limitation, negotiating and documenting the Second Amended Agreement, preparing and processing the revised Park Improvement Plans, obtaining City’s and EVMWD’s approval, and constructing the modified park amenities, primarily being the elimination of the tennis courts and the modification of the dog park component. The Modification Costs are estimated at approximately \$110,549, as reflected in Exhibit “E”. The Modification Costs estimate is subject to adjustment to reflect costs actually incurred, provided however in no event will the Modification Costs exceed the Modification Savings.

Payment Requests for reimbursement of Modification Costs may be submitted to the City Manager on a monthly basis following the Date of Agreement. Upon receipt of a Payment Request (and accompanying reasonable documentation), the City Manager shall conduct a review in order to confirm that such request is complete, and if complete, approve payment to Summerly. The City Manager shall promptly notify Summerly of the specific nature of any deficiencies if the request is determined to be incomplete in any respect.

For purposes of this Agreement, the term “Modification Savings” means the incremental decrease in costs incurred by Summerly in connection with not constructing certain park amenities, primarily being the deletion of the tennis courts as a park component. The Parties have agreed to rely on Summerly’s budget for Phase 3 and have therefor determined that the Modification Savings is \$258,718, as reflected on Exhibit “E”.

5. The following paragraph is added to Section 2.5 of the First Amended Agreement:

With respect to delivery of the notice of completion for Phase 3 Park Improvements, within 30 days following City’s confirmation that the Park Improvements are complete and accepted, Summerly shall pay City an amount equal to the Modification Savings.

6. The following paragraph is added to Section 2.7 of the First Amended Agreement:

Notwithstanding any provision herein to the contrary, the City shall not be obligated to accept the Phase 3 Park Improvements until the payment for the Modification Savings is received by the City.

7. Except as amended by this Second Amendment the terms, conditions and provisions of the First Amended Agreement shall remain in full force and effect.

8. This Second Amendment shall be effective on the date of execution by the last Party to so execute this Second Amendment ("Effective Date").

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this **SECOND 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: _____, 2019

Dated: _____, 2019

“CITY”

“SUMMERLY”

CITY OF LAKE ELSINORE,
a California municipal corporation

McMILLIN SUMMERLY, LLC,
a Delaware limited liability company

By: _____
Grant Yates, City Manager

By: PV DEVELOPMENT MANAGEMENT LLC,
a Delaware limited liability company, as
property manager

ATTEST:

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

By: _____
City Clerk

By: _____

Name: _____

APPROVED AS TO FORM:

Title: _____

By: _____
City Attorney

“VAN DAELE”

VAN DAELE DEVELOPMENT CORPORATION,
a California corporation

By: _____

Name: _____

Title: _____

EXHIBIT “A-1”
MULTI-USE PARK
SCHEDULE OF PERFORMANCE AND PHASING

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| 1. | <u>Design.</u> Developer shall have submitted final design plans addressing access issues for the design of the Multi-Use Park for consideration by the City. | Completed. |
| 2. | <u>City approval or disapproval of Definitive Design.</u> City shall approve or disapprove of the revised concept plan. In the event of disapproval, City shall provide a reasonable explanation of the grounds for disapproval. | Completed. |
| 3. | <u>Submission of Park Improvement Plans pursuant to section 2.2 of the Agreement for Phase 1 and 2.</u> Developer shall submit Park Improvement Plans for Phase 1 and Phase 2 to the City. | Completed. |
| 3.1 | <u>Submission of Park Improvement Plans pursuant to section 2.2 of the Agreement, as amended, for Phase 3.</u> Developer shall submit Park Improvement Plans for Phase 3 to the City. | Within 45 days of approval of the Second Amendment by the City. |

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| 4. | <u>City approval or disapproval of Park Improvement Plans.</u> City shall process the Park Improvement Plans submitted by Developer consistent with the provision of section 2.2 of the Agreement, as amended, and shall approve or disapprove of the Park Improvement Plans. In the event of disapproval, City shall provide a reasonable explanation of the grounds for disapproval. | Completed. Developer to submit modified Park Improvement Plans for Phase 3 Park Improvements per Second Amendment (See 4.1 below) |
| 4.1 | <u>City approval or disapproval Park Improvement Plans for Phase 3.</u> City shall process the modified Phase 3 Park Improvement Plans submitted by Developer consistent with the provision of section 2.2 of the Agreement, as amended, and shall approve or disapprove of the modified Park Improvement Plans for Phase 3. In the event of disapproval, City shall provide a reasonable explanation of the grounds for disapproval. | Within 30 days of submission by Developer. |
| 5. | <u>Resubmission of modified Park Improvement Plans for Phase 3.</u> In the event of disapproval by the City, Developer shall resubmit modified Park Improvement Plans for Phase 3 | Within 30 days of disapproval by City. |

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| 5.1 | City shall approve or disapprove the re-submitted Park Improvements Plans pursuant to 5 above. In the event of disapproval, City shall provide a reasonable explanation of the grounds for disapproval and Developer shall thereafter resubmit revised plans as provided in 5 above until approval is given pursuant to section 2.2 of the Agreement. | Within 30 days of re-submission by Developer. |
| 6. | <u>Completion of Phase 1 Park Improvements.</u> (Phase 1 Park Improvements comprise 8 ± acres of park along with access as generally shown on Exhibit “C”.) Developer shall have completed Phase 1 of the Park Improvements. | Completed. |
| 7. | <u>Completion of Phase 2 Park Improvements.</u> (Phase 2 Park Improvements comprise 4± acres of park as generally shown on Exhibit “C”.) Developer shall have completed Phase 2 of the Park Improvements. | Completed. |
| 8. | <u>Completion of modified Phase 3 Park Improvements.</u> (Modified Phase 3 Park Improvements comprise 12 ± acres of park as generally shown on Exhibit “C-1”.) Developer shall have completed the third Phase of the Park Improvement. | On or before January 31, 2021 (subject to Permitted Delays). |

EXHIBIT "C-1"

DESIGN



EXHIBIT “E”**ESTIMATE OF MODIFICATION COSTS
AND
MODIFICATION SAVINGS**

VENDOR	SCOPE		INCREASE	DECREASE
PARK WEST	NETS	\$(1,814)		\$(1,814)
	BENCH	\$(2,204)		\$(2,204)
	DG	\$23,959	\$23,959	
	TURF	\$(8,000)		\$(8,000)
	SHRUBS	\$6,000	\$6,000	
	IRRIGATION	\$(15,500)		\$(15,500)
	DRAINAGE	\$(4,000)		\$(4,000)
Z BEST	4" CONCRETE	\$(10,389)		\$(10,389)
	6" CONCRETE	\$(767)		\$(767)
	TENNIS COURT	\$(137,750)		\$(137,750)
	PLEXIPAVE	\$(18,060)		\$(18,060)
FENCE CORP	TENNIS COURT	\$(60,234)		\$(60,234)
ACE	LIGHTING	0		
DMC	GRADING	\$53,790	\$53,790	
HOWARD & ASSOCIATES	LANDSCAPE	\$7,700	\$7,700	
O'DAY CONSULTANTS	CIVIL	\$8,300	\$8,300	
KRUSE AND ASSOCIATES	ELECTRICAL	\$800	\$800	
FSG	ATTORNEY	\$10,000	\$10,000	
TOTAL ESTIMATED COST/SAVINGS		\$(148,169)	\$110,549	\$(258,718)