



July 1, 2015

McMillin Summerly, LLC
c/o The Corky McMillin Companies
Attention: Brian Milich
2750 Womble Road, Suite 200
San Diego, California 92106

RE: IMPLEMENTATION AGREEMENT

Dear Mr. Milich:

Enclosed please find your copy of the fully executed Amended and Restated Park Implementation Agreement for your files. Please don't hesitate to give this office a call, should you have any questions.

Sincerely,

Virginia J. Bloom
City Clerk

Enclosure

cc: Public Works

951.674.3124

130 S. MAIN STREET

LAKE ELSINORE, CA 92530

WWW.LAKE-ELSINORE.ORG

**AMENDED AND RESTATED
PARK
IMPLEMENTATION AGREEMENT**

THIS AMENDED AND RESTATED PARK IMPLEMENTATION AGREEMENT ("Agreement"), effective as of April 10, 2012 (the "Effective Date"), 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 and successor in interest to Lang-CP Lake Elsinore, LLC ("Laing"), and McMillin Real Estate Services, L.P., a General Contractor licensed under California law, on the other hand, (hereinafter jointly referred to as "Developer"). City and Developer are referred to collectively as the "Parties."

RECITALS

A. On June 8, 1993, the City Council of the City adopted Ordinance No. 956 approving and adopting the East Lake Specific Plan covering approximately 3000 acres of property as further described herein. The East Lake Specific Plan has thereafter been revised with ten amendments, including on August 24, 2004 by adoption of Ordinance No. 1126 approving the East Lake Specific Plan Amendment 6 ("SPA 6").

B. The property included within the East Lake Specific Plan is situated within the Rancho Laguna Project Area II Redevelopment Plan and the Rancho Laguna Project Area III Redevelopment Plan (the "Redevelopment Plans") adopted by the former Redevelopment Agency of the City of Lake Elsinore ("Agency") in accordance with Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended (the "Redevelopment Law").

C. In furtherance of the objectives of the Redevelopment Plans, on or about December 26, 2002 Agency and Laing entered into a Disposition and Development Agreement relating to the acquisition and development of certain property located within the East Lake Specific Plan ("Project"). Thereafter on or about March 8, 2011 Agency and Developer entered into an amendment and restatement of the 2002 Disposition and Development Agreement ("DDA").

D. City and Laing entered into a First Amended and Restated Development Agreement which was recorded as Document No. 2004-1001282 ("Restated Development Agreement") and City approved Tract 31920-1, both of which address properties within the East Lake Specific Plan as amended by SPA 6 and which are subject to the DDA. The Restated Development Agreement and the conditions of approval of Tract 31920-1 set out the obligations of Developer with respect to dedication of park lands and construction of parks within Tract No. 31920-1. The DDA includes a schedule of performance by Developer for the phased completion of the Project.

E. The Parties now enter into this Agreement in order to implement the park land dedication and improvement provisions of City's Quimby Act Resolution No. 89-44, SPA 6 and the Restated Development Agreement and to coordinate the phasing of such

improvements with the provisions of the DDA. The Agreement clarifies and carries out the conditions of approval of Track 31920-1 and SPA6 and clarifies and carries out the provisions of the Restated Development Agreement. This Agreement is entered into consistent with the provisions of California Government Code Sections 65864-65869.5 (“Development Agreement Law”), Government Code Sections 38501-38510 (“Municipal Park Abandonment Law of 1939”), and Chapter 19.12 of the City of Lake Elsinore’s Municipal Code.

F. Due to changes in circumstances after the approval of the original East Lake Specific Plan and SPA 6, City prefers larger parks with more complete recreational amenities to smaller parks which require comparatively more maintenance and provide limited useful recreational facilities. City also has limited funds with which to improve dedicated parklands and cannot utilize such lands for any other purpose under existing law. Although SPA 6 provides for two small park sites, 6.69 acres (Lot 28) and 4.77 acres (Lot 19) respectively, in addition to the 24.11 acre park site (Lot 29), it is more consistent with the City’s park goals to have one large improved “regional park” on Lot 29, forego Developer constructed park improvements in Lot 28 which also provides water retention capacity and an EVMWD pump station facility, and relinquish ownership of Lot 19.

G. City has determined that Lot 19 is no longer necessary to serve a public park purpose for which it was originally dedicated. Accordingly, City desires to reconvey Lot 19 to McMillin Summerly, LLC, as the current owner of Tract 31920-1 and successor in interest to the dedicator of Lot 19 pursuant to Government Code section 66477.5. Additionally, as a result of the changes of circumstances noted above, the Community Development Director has concluded that the recreational amenities to be constructed on Lot 29 by Developer pursuant to this Agreement will provide for a more intense and better recreational use to the public such that the reconveyance of Lot 19 is a minor modification to SPA 6 and is consistent with its purpose and intent.

H. This Agreement relates to the timing and financing of previously approved elements of the development of the property referenced herein; will not have significant impact on the environment; is consistent with the Environmental Impact Report certified for the granting of the entitlements referred to herein; and is consistent with other prior environmental determinations and with the requirements of the California Environmental Quality Act. As such, no further environmental review is necessary for approval of this Agreement.

I. This Agreement is consistent with the City’s General Plan, the East Lake Specific Plan, SPA 6, and associated other amendments to the East Lake Specific Plan, the Restated Development Agreement, DDA, and other applicable ordinances, plans and policies of the City.

J. Developer and City now desire to clarify the respective rights and obligations under the Restated Development Agreement, East Lake Specific Plan, SPA 6, the conditions of approval of Track 31920-1, the DDA and City’s Quimby Act Resolution No. 89-44.

AGREEMENT

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

ARTICLE I

IMPROVEMENT AND RECONVEYANCE

Section 1.1. Improvements of Dedicated Parkland. Developer shall improve Lot 29 of Tract 31920-1, the approximately 24 acre lot previously dedicated to City for park purposes and accepted through approval of Tract 31920-1. Lot 29 shall be improved as a multi-use park ("Multi-Use Park") in a manner consistent with the intent of SPA 6 and as more specifically described in Article II hereof. Developer shall have no obligation to install park improvements within Lot 28. Provided that Developer performs consistently with the Schedule of Performance and Phasing attached hereto as Exhibit "A" and incorporated herein by reference, and the terms and conditions of this Agreement, Developer shall not be required to furnish performance and payment bonds in an amount equal to the estimated cost of the Multi-use Park Improvement, or any other amount, as to the yet to be completed phase(s).

Section 1.2. Reconveyance of Lot in Exchange for Improvements. The City has determined that Lot 19 of Tract 31920-1 previously dedicated as park land is no longer needed for park purposes, would create a undo financial burden for City and that Lot 19 has therefore been reconveyed to McMillin Summerly, LLC, free of any requirement for a public park use pursuant to Government Code section 66477.5 by way of a Quitclaim Deed recorded in the Official Records of Riverside County, consistent with the requirements of the Original Agreement (as defined in Section 4.14 herein. Following reconveyance of Lot 19 by City, McMillin Summerly, LLC obtained entitlements for development of Lot 19, which entitlements are not a part of this Agreement.

Section 1.3. Vested In-lieu Credits. Developer has performed certain improvements to Lot 29, including but not limited to mass grading activities, to which Developer has submitted evidence of the value of such improvements in an amount in excess of \$769,600, which evidence has been reviewed and accepted by City as establishing a benefit to the City of at least \$769,600. Accordingly, Developer is granted a park fee credit as of the Effective Date of this Agreement with respect to 481 units (\$769,600 / \$1,600).

Section 1.4. Refund of Previously Paid Park Fees. McMillin Summerly, LLC, or its predecessor and assigns, previously deposited Project related park fees with the City that was originally estimated to be less than \$35,000. The City has paid and refunded such previously paid park fees to McMillin Summerly, LLC.

Section 1.5. Commencement and Completion of Construction. Developer shall complete construction of the Multi-Use Park Improvements as defined in Section

2.1, within the time set forth in the Schedule of Performance and Phasing. Upon completion of each phase of the Multi-Use Park Improvements Developer is entitled to additional park fee credit as follows: Phase I – 219 units; Phase II – 300 units; and Phase III – all remaining units in the Project.

If Developer or its assigns proceed with construction of units in excess of the number for which fees have been credited, fees for such excess units shall be paid by Developer and those fees shall subsequently be reimbursed to Developer by City upon (a) completion of the required Multi-Use Park Improvements pursuant to the Schedule of Performance and Phasing; or (b) commencement of a phase of the Multi-Use Park Improvements as provide in Section 1.6.

Section 1.6. Conditional In-Lieu Credits. In order to avoid a situation where Developer or its assigns would need to pay in-lieu park fees prior to completion of the Multi-Use Park Improvements as set forth in the Schedule of Performance and Phasing, Developer may elect to commence construction of the Phase I Park Improvements, or the next successive phase of the Multi-Use Park Improvements and receive cumulative conditional in-lieu credit as follows:

a. Conditional In-Lieu Credits for Phase I Park Improvements. Subject to satisfaction of the conditions set forth below, Developer is granted a conditional park fee credit as of the Effective Date of this Agreement for 219 units (the “Phase I Conditional In-Lieu Credits”). The City’s grant of the Phase I Conditional In-Lieu Credits is conditioned upon:

i. Developer having obtained City-approved Park Improvement Plans and paid all applicable plan check fees; and

ii. Developer’s commencement of construction of the Phase I Park Improvements and the diligent prosecution of the same to completion as provided in Section 2.5.

b. Conditional In-Lieu Credits for Phase II Park Improvements. Subject to satisfaction of the conditions set forth below, Developer is granted a conditional park fee credit as of the Effective Date of this Agreement for 300 units (the “Phase II Conditional In-Lieu Credits”). The City’s grant of the Phase II Conditional In-Lieu Credits is conditioned upon:

i. Developer having obtained City-approved Park Improvement Plans and paid all applicable plan check fees; and

ii. Developer’s commencement of construction of the Phase I and Phase II Park Improvements and the diligent prosecution of the same to completion as provided in Section 2.5.

c. Conditional in-Lieu Credits for Phase III Park Improvements. Subject to satisfaction of the conditions set forth below, Developer is granted a conditional park fee credit as of the Effective Date of this Agreement for the remainder of

the units in the Project (the “Phase III Conditional In-Lieu Credits”). The City’s grant of the Phase III Conditional In-Lieu Credits is conditioned upon:

- i. Developer having obtained City-approved Park Improvement Plans and paid all applicable plan check fees; and
- ii. Developer’s commencement of construction of the Phase I, Phase II and Phase III Park Improvements and the diligent prosecution of the same to completion as provided in Section 2.5.

Section 1.7. Quimby Act Obligations Fulfilled. City acknowledges and agrees that the previous dedication of Lots 28 and 29, the improvements thereon completed to date, and the completion of the future Multi-Use Park Improvements to Lot 29 consistent with the Design and Park Improvement Plans fully satisfy the Project’s park land dedication and in-lieu fee requirements of the City’s Quimby Act Resolution No. 89-44.

ARTICLE II

PARK DESIGN AND CONSTRUCTION OF IMPROVEMENT

Section 2.1. Design. Developer has prepared a final park design for the Multi-Use Park in consultation with City, a copy of which is attached hereto as Exhibit “C” and incorporated herein by reference (the “Design”). The Design proposes that the Multi-Use Park be improved in three phases as set out in the Schedule of Performance and Phasing (Exhibit “A”) and as designated in the Phasing Diagram attached hereto as Exhibit “B” and incorporated herein (hereinafter the “Phase 1 Park Improvements,” “Phase 2 Park Improvements” and the “Phase 3 Park Improvements” which are collectively referred to herein as the “Multi-Use Park Improvements”) and substantially conforms to all of the specifications of SPA 6 and is fully consistent with its purpose and intent. City approves the components and overall concept of the Design, subject to review and approval by City of the Park Improvement Plans, including such modifications, if any, as necessary to accommodate public safety/access requirements, so long as those potential changes do not alter the Design attached hereto in a manner that substantially changes the approved components and Design attached hereto in Exhibit “C”.

Section 2.2. Park Improvement Plans. Developer shall cause plans and specifications for the Multi-Use Park Improvements, including all necessary engineering plans and specifications, to be prepared consistent with the Design and with the standards, quality and materials of the park elements and specification levels to those found at the Canyon Hills Community Park in the City (the “Park Improvement Plans”). The Park Improvement Plans shall be submitted by Developer for plan check approval by the City within the time set out in the Schedule of Performance and Phasing unless an earlier date is necessary to accommodate Developer’s election to proceed pursuant to Section 1.6. City shall use commercially reasonable efforts to expeditiously process all approvals relating to the Park Improvement Plans. Developer shall be responsible for all applicable plan check fees and related inspection fees, which may be estimated upon

submission but shall be based on actual hourly changes incurred for outside plan checkers and inspectors.

To the extent that any failure by City to process and approve the Park Improvement Plans within the time set out in the Schedule of Performance and Phasing causes a delay in the commencement of construction of a Phase of the Park Improvements, Developer shall be entitled to an extension of time for completion of its obligations under the Schedule of Performance and Phasing equal to such delay by City.

Nothing in City's approvals shall add components or make substantial material changes in the Design approved pursuant to Section 2.1 above.

Section 2.3. Construction of Multi-Use Park. The construction of the Multi-Use Park Improvements in phases pursuant to the Park Improvement Plans by Developer as provided in this Agreement is not a City public works project. City seeks a completed, "turn-key" park as a condition of approval of SPA 6 and Tract No. 31920-1. City's role is to approve the Park Improvement Plans, perform regular inspections, and to make Lot 29 available to Developer for completion of the work of improvement. Developer is performing this work of improvement solely for the purpose of fulfilling the conditions of approval for Tract Map 31920-1 and SPA 6, and to meet the obligations under the Restated Development Agreement and DDA.

Section 2.4. Grant of Access. Prior to the commencement of construction of the Phase 1 Park Improvements, City and Developer shall enter into a Right of Entry Agreement substantially in the form of Exhibit "D."

Section 2.5. Phase Commencement, Completion and Delay. Except for permitted delays under Section 4.8, once a phase of the Multi-Use Park Improvements pursuant to the Park Improvement Plans is commenced, Developer shall diligently and continuously pursue such phase to completion in a timely manner in accordance with the Schedule of Performance and Phasing. Should Developer elect to proceed pursuant to Section 1.6, "completion in a timely manner" shall be deemed to require completion of the applicable phase within two (2) years following the commencement of construction of that phase. Upon completion of the Multi-Use Park Improvements with respect to a phase, Developer shall deliver to City a notice of completion. City shall have thirty (30) calendar days from the date of receipt of notice of completion to dispute the assertion of the completeness of the phase. Any such dispute shall be delivered by Notice to Developer with a detailed explanation as to why City does not consider the phase complete.

Section 2.6. Prevailing Wages; Indemnity. With respect to meeting the requirement to provide a "turnkey" park, Developer and its contractors and subcontractors shall be responsible for compliance with prevailing wage laws as set out in Labor Code Section 1770, et seq., and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Upon the request of the City,

the Developer shall certify to the City that it is in compliance with the requirements of this Section 2.6.

Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, and/or expense (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, and/or construction of the Multi-Use Park Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (b) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the construction of the Multi-Use Park Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Multi-Use Park Improvements by the Developer.

Section 2.7. Liens; Acceptance of Park; Conveyance. Conditional final lien releases for labor and materials provided in connection with the Multi-Use Park Improvements shall be submitted to the City as part of the notice of completion (provided that this requirement shall not apply if waived by the City because Developer has provided to the City a payment bond or provides a bond protecting the City from mechanics' liens made by parties that have not provided such lien releases in a form acceptable to the City). Additionally, Developer shall assign to the City, to the extent assignable, all of Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Multi-Use Park Improvements. Any warranties or guarantees of third parties with respect to the Multi-Use Park Improvements shall be delivered to the Director of Public Works as part of the notice of completion submitted pursuant to Section 2.5.

City agrees to promptly accept each phase of the Multi-Use Park Improvements upon (i) Developer's completion of the improvement for the phase in accordance with the Park Improvement Plans, (ii) Developer's submittal of the aforementioned lien and warranty documentation, and (iii) Developer's completion of a ninety (90) day landscape maintenance period at the conclusion of which all landscape is established and healthy. No public use of a phase of the Multi-Use Park shall be permitted prior to acceptance of such phase by the City as provided herein.

Section 2.8. Builder's Risk Insurance. Prior to commencement of construction of the Multi-Use Park Improvements and at all times prior to acceptance of such improvements, City shall secure builder's risk insurance. City is to maintain builder's risk insurance substantially in the form currently maintained by the City under that certain California JPIA Memorandum of Property Coverage 7-1-14/15 or such subsequently acquired insurance is substantially similar form (the "City's Builder's Risk Property Insurance").

If, after commencement and prior to acceptance of any phase of the Multi-Use Park Improvements, such improvements are damaged or destroyed by a covered peril, Developer shall promptly remedy such damage or loss and any work done by Developer in rebuilding or restoring the improvements shall be paid for by City which shall be solely entitled to adjust the loss with and receive the proceeds from the City's Builder's Risk Property Insurance. City and Developer acknowledge and agree that any delay in adjusting the loss or receiving payment from the City's Builder's Risk Property Insurance shall not delay payment to Developer for the work done by Developer in rebuilding or restoring the improvements. City and Developer further acknowledge and agree that any uninsured loss not caused by Developer, its contractor or subcontractors shall be the sole risk of City.

City shall be responsible for maintaining the City's Builder's Risk Property Insurance for the full value of the Multi-Use Park Improvements, without voluntary or minimum deductibles in excess of \$5,000 per occurrence. As to any covered loss to the Multi-Use Park Improvements, Developer shall reimburse the City for the costs not covered because of the deductible, provided that such cost shall not exceed \$5,000 per occurrence irrespective of any increases in the deductible of the City's Builder's Risk Property Insurance following the Effective Date. City and Developer waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, directors, agents and employees for recovery of damages caused by any perils to the extent covered by the City's Builder's Risk Property Insurance. City shall provide certificates of insurance with original endorsements to Developer as evidence of the insurance coverage required herein. Certificates of such insurance shall be furnished to Developer on or before commencement of performance of any Work at the Park.

City's acceptance of a phase of the Multi-Use Park Improvements shall also constitute City's agreement to maintain the improvements accepted and to release Developer of any such further obligation.

ARTICLE III

ENFORCEMENT AND REMEDIES

Section 3.1. Defaults-General. Failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement constitutes a default under this Agreement. An injured party shall give written notice of default to the party in default, specifying in reasonable detail the default complained of by the injured party. As provided below, the party in

default shall immediately commence to cure, correct or remedy such default upon receiving notice, and shall complete such cure, correction or remedy with diligence. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the date of default.

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" (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an "Event of Default" for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall mean a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after receiving notice of the default in writing as described above.

Section 3.2. Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power or remedy given by the terms of any instrument, or by any statute or otherwise.

ARTICLE IV

ADDITIONAL PROVISIONS

Section 4.1. Counterparts. This Agreement may be executed in counterparts, each of which so executed shall be deemed an original, and such counterparts together shall constitute but one Agreement.

Section 4.2. Minor Modification of SPA 6 Only. This Agreement carries out the purpose and intent of SPA 6 and the originally approved East Lake Specific Plan and their respective conditions of approval and constitutes only a minor modification of the original East Lake Specific Plan and of SPA 6.

Section 4.3. Integration; Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement or modification of this Agreement or any provisions hereof shall be binding unless executed in writing by the parties.

Section 4.4. Cooperation. The parties agree to fully cooperate in carrying out the intent of this Agreement and shall execute all documents reasonably necessary to that end. The court may order any party to execute any document necessary to carry out the terms and provisions of this Agreement. Developer may substitute another licensed general contractor for McMillin Real Estate Services, L.P., provided that such contractor is an experience builder of park improvements and is otherwise fully qualified to

implement this Agreement. City agrees to cooperate in such a substitution should it be requested and its cooperation will not be unreasonably withheld.

Section 4.5. Notice. All notices, requests, demands and other communications (“Notice”) called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, transmitted via facsimile or within two (2) days after having been mailed by United States certified or registered mail, postage prepaid, addressed to the parties, their successors-in-interest or their permitted assigns at the following addresses, or at such other addresses as the parties may designate by written notice in the manner aforesaid:

City:

City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attn: City Manager
Fax: (951) 674-2392

With copy to:

Leibold McClendon & Mann, P.C.
22422 Mill Creek Drive
Suite 105
Laguna Hills, CA 92653
Attn: Barbara Z. Leibold, Esq.
Fax: (949) 457-6305

Developer:

McMillin Summerly LLC
c/o The Corky McMillin Companies
2750 Womble Road, Suite 200
San Diego, CA 92106
Attn: Brian Milich
Fax: (619) 336-3596

With copy to:

Friedman Stroffe & Gerard, P.C.
19800 MacArthur Boulevard, Suite 1100
Irvine, CA 92612-2425
Attn: James D. Stroffe, Esq.

Section 4.6. No Adverse Interpretation to Drafter. This Agreement was prepared and negotiated in an arm’s length negotiation in which both Parties were represented by attorneys and the attorneys for each party were involved in the drafting of

the Agreement. As such, neither party can be identified as the drafter of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent and no rule of strict construction will be applied against either party.

Section 4.7. Timing of Performance. Time is of the essence under this Agreement.

Section 4.8. Permitted Delays. Neither party shall be deemed to be in default for failure or delay in performance of any of its obligations under this Agreement if caused by floods, earthquakes, other acts of God, fires, wars, insurrection, riots, terrorism or similar hostilities, strikes, lockouts, any form of labor dispute, government regulations, referenda, acts of or failures to act by governmental authorities, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, inability to secure necessary labor, materials or tools, or other causes beyond either of the parties' reasonable control. If any such event shall occur, the term of this Agreement and the time for performance by Developer of any of its obligations hereunder or pursuant to the Park Improvement Plans shall be extended by the period of time that such events delay construction of the Multi-Use Park Improvements. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained but in any event no more than sixty (60) days of the party's knowledge of the cause of such delay, and the time for performance of the delayed party's obligations shall be extended by the period of any such delay. Failure to present a claim for delay within ninety (90) days of knowledge of the cause of such delay, shall be deemed waiver of any time extension. Notwithstanding the foregoing, in no event shall Developer be entitled to a permitted delay due to an inability to obtain financing or proceed with development as a result of general market conditions, interest rates or other similar circumstances that make development impossible, commercially impractical or infeasible.

Section 4.9. Third Party Beneficiary. No person or entity other than City, Developer and the permitted successors and assigns of each of them shall be authorized to enforce the provisions of this Agreement.

Section 4.10. Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Riverside County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 4.11. Attorney's Fees. In the event that any action or suit is instituted by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney's fees.

Section 4.12. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such

part's rights to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 4.13. Severability. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.

Section 4.14. This Agreement is an amendment and restatement of that certain Park Implementation Agreement by and between the City executed on June 5, 2012 and Developer executed on June 12, 2012 (the "Original Agreement"), and shall, upon the execution by the parties, amend and restate the Original Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]


IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective date set forth below.

Dated: 7/1, 2015

Dated: _____, 2015

"CITY"

CITY OF LAKE ELSINORE,
a California municipal corporation

By:  _____

ATTEST:

By:  _____
Virginia J. Bloom, City Clerk

APPROVED AS TO FORM:

LEIBOLD McCLENDON & MANN, P.C.

By:  _____
Barbara Leibold, City Attorney

"DEVELOPER"

MCMILLIN SUMMERLY LLC, a Delaware
limited liability company ("**Developer**")

By: McMillin Real Estate Services, L. P., a
California limited partnership

Its: Administrative Manager

By: MCM Real Estate Group, Inc., a
California corporation

Its: General Partner

By:  _____

Its:  _____

By:  _____


Its:  _____

Dated: _____, 2015

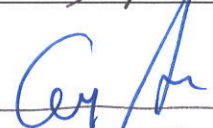
MCMILLIN REAL ESTATE SERVICES, L. P., a
California limited partnership ("**Developer**")

By: MCM Real Estate Group, Inc., a
California corporation

Its: General Partner

By:  _____

Its:  _____

By:  _____

Its:  _____

APPROVED AS TO FORM:

FRIEDMAN STROFFE & GERARD, P.C.

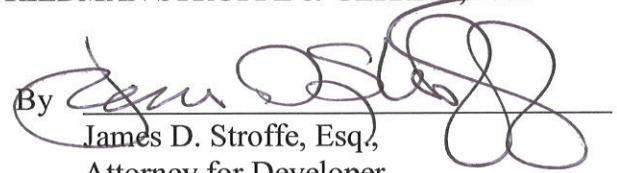
By 
James D. Stroffe, Esq.,
Attorney for Developer

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

- | | | |
|----|---|--|
| 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.</u> Developer shall submit Park Improvement Plans to the City. | Prior to the City’s authorization (building permit sign-off) allowing for occupancy of the 400th residential unit. |
| 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 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. | Within 30 days of submission by Developer. |

PHASING DIAGRAM



EXHIBIT "C"

DESIGN

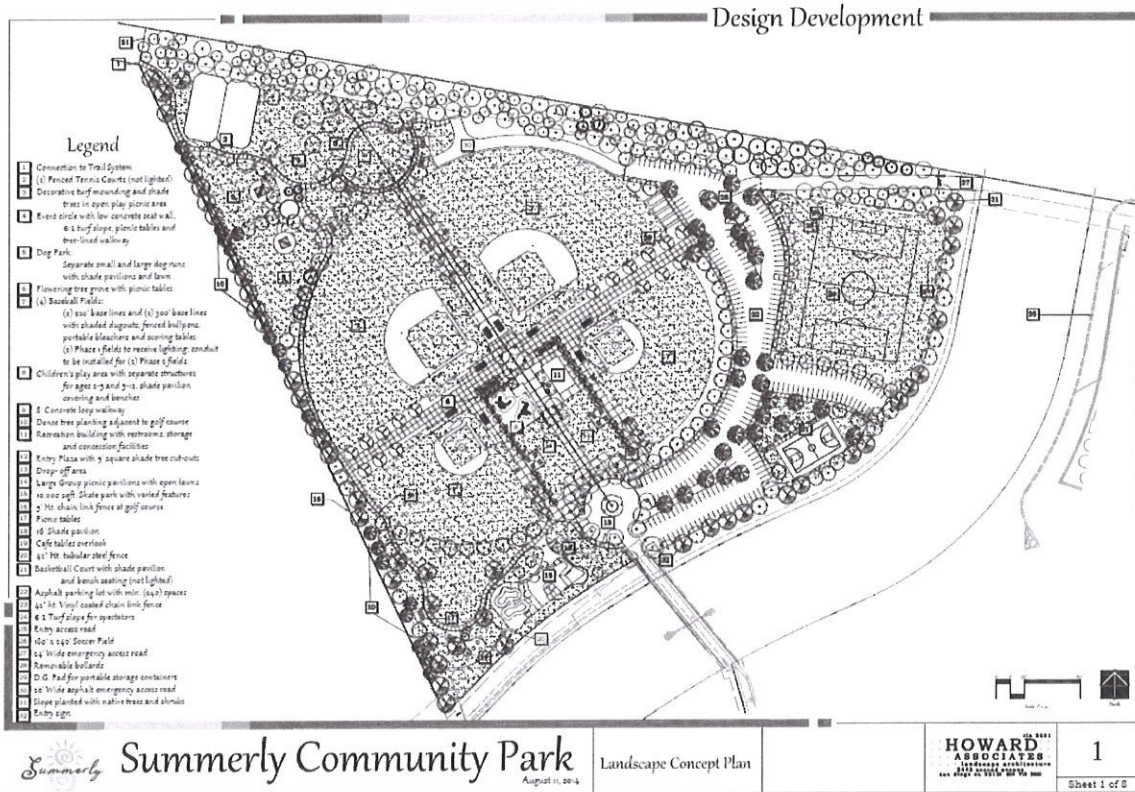


EXHIBIT "D"

RIGHT OF ENTRY AGREEMENT AND LICENSE

THIS **RIGHT OF ENTRY AGREEMENT AND LICENSE** ("License") is entered into as of _____, 20__ 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, and **MCMILLIN REAL ESTATE SERVICES, L.P.**, a General Contractor licensed under California law, on the other hand, (hereinafter jointly referred to as "Developer"). City and Developer are sometimes referred to collectively as the "Parties."

RECITALS

A. City and Developer entered into that certain Amended and Restated Park Implementation Agreement dated _____, 2015 (the "Agreement"). Unless otherwise defined herein, capitalized terms as used in this License shall have the same meaning as the Agreement.

B. Pursuant to the Agreement, Developer is responsible for construction of the multi-use park improvements at the Multi-Use Park in phases pursuant to the Park Improvement Plans.

C. The Multi-Use Park site (the "Park") is approximately 24.11 acres and is particularly described as Lot 29 of Tract No. 31920-1 in the City of Lake Elsinore, County of Riverside, State of California, as per Map Recorded in Book 394, Page(s) 41 through 51, Inclusive of Maps, in the Office of the County Recorder of the County of Riverside

D. In furtherance of the Agreement and the best interests of the community, Developer desires to enter the Park for the purpose of pre-construction and construction related activities (the "Work") and City desires to permit Developer to complete such actions by granting a right of entry as provided herein.

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

Section 1. Right of Entry. Provided that all of the terms and conditions of this License are satisfied, the City hereby grants to Developer and Developer's Designees, a temporary and conditional right to enter upon, in and below the Park (the "Right of Entry") for a continuous period commencing on the Effective Date of this License and continuing until the completion of the Work and expiration of any maintenance periods, for the purpose of carrying out and completing the Work and such other activities as deemed necessary and appropriate by Developer and consented to in writing by the City's Community Services Department in furtherance of the implementation of the Agreement and the Park Improvement Plans. This right of entry shall also include the right to place a temporary sign acceptable to the City at the Park

that announces that the Park Improvements, along with appropriate descriptors, will be coming soon to the Park.

Section 2. Conditions to Entry. Prior to Developer entering the Park, the following conditions must be satisfied:

a. Developer shall furnish to City evidence satisfactory to City that Developer and Developer's Designee has obtained liability insurance in amounts as set forth in Section 6.

b. Developer must have obtained, at its sole cost and expense, all permits and approval required for the Work to be performed at the Park pursuant to the Agreement and this License.

Section 3. Performance Standards. By execution of this License, Developer agrees for itself and on the behalf of Developer's Designees as follows:

a. Prior to commencing the on-site Work on any phase and during all times prior to the acceptance of the Multi-use Park Improvements by the City for that phase, Developer or Developer's Designee shall install and maintain a construction chain-link fence, 6-feet high, around the perimeter of that portion of the Park constituting the phase then under construction.

b. Developer will not permit any dangerous condition to be created at the Park.

c. All acts and things done by Developer or Developer's Designees on the Park will be done in a careful and reasonable manner, in accordance with all federal, state and local laws. Any damage to the Park caused by Developer or Developer's Designee shall be promptly repaired to the reasonable satisfaction of the Park Maintenance Supervisor.

d. Developer and Developer's Designees will enter the Park entirely at their own cost, risk and expense.

e. Developer and Developer's Designees shall allow for regular inspection of the Work by City and its representatives, employees, agents or independent contractors who may inspect the Work or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Developer's compliance with the terms and conditions of this License.

f. Developer shall not permit any mechanics', materialmen's or other liens of any kind or nature ("Liens") to be filed or enforced against the Park in connection with the Work. Developer shall indemnify, defend and hold harmless the City from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. The City reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Park, or any portion thereof, or on the Park Improvements, any notices of non-responsibility or other notice as may be desirable to protect the City against liability. In addition to, and not as a limitation of City's other rights and remedies under this License, should

Developer fail, within thirty (30) days of written request from the City, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless the City from and against any loss, damage, injury, liability or claim arising out of a Lien, then the City, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to the City by Developer upon written demand.

g. Except for the park fee credits as provided in the Agreement, Developer shall not have any interest in the Park; nor shall Developer be entitled to any reimbursement or repayment from the City for any Work performed upon the Park pursuant to this License or the Agreement, except in the event of a casualty loss to the Multi-use Park Improvements occurring prior to the expiration of any maintenance period and acceptance by the City and subject to an offset or reimbursement of the deductible as provided in Section 2.7 of the Agreement.

h. That Developer shall take all necessary precautions to prevent the import and/or release into the environment of any hazardous materials which are imported to the Park during the performance of the Work. If hazardous materials are imported onto the Park as a result of the performance of the Work, Developer shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. Developer shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Park. In the event Developer or Developer's Designees discover any substance on the Park which they suspect might be hazardous materials, Developer shall immediately notify or cause notice to be given to the City Manager, and Developer and Developer's Designees shall immediately stop all Work upon the Park until notified by the City that work may be resumed.

i. Developer shall comply and cause Developer's Designees to comply with all statutes, ordinances, rules, regulations, orders and requirements now in effect or that become effective during the term of this License applicable to its sampling and other activities pursuant to the access granted by this License, including, but not limited to, all Environmental Laws, with respect to hazardous materials imported onto the Park as a result of the performance of the Work by Developer or Developer's Designees.

Section 4. [INTENTIONALLY LEFT BLANK].

Section 5. Prevailing Wage/Indemnification. With respect to meeting the requirement to provide "turnkey" improvements, Developer and Developer's Designees shall be responsible for compliance with prevailing wage laws as set out in Labor Code Section 1770, et seq., and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Upon the request of the City, the Developer shall certify to the City that it is in compliance with the requirements of this Section 5.

Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, and/or expense

(including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, and/or construction of the Park Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (b) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the construction of the Park Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. The foregoing indemnity shall survive termination of this License and shall continue after completion of the construction of the Park Improvements by the Developer.

Section 6. Insurance. Developer shall secure or cause Developer's Designees performing any entry onto the Park to secure, prior to commencing any activities under this License, and maintain or cause to be maintained during the term of this License, insurance coverage as follows:

- a. Workers' Compensation Insurance as required by California statutes. Developer shall deliver an endorsement to the Workers' Compensation Insurance policy, in form acceptable to the City's Risk Manager, containing a waiver of subrogation by the insurance carrier with respect to the City, its officials, agents, employees, representatives, and volunteers;
- b. Commercial General Liability Insurance, including coverage for Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage and Independent Contractor's Liability, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and
- c. Comprehensive Automobile Liability coverage, including - as applicable - owned, non-owned and hired autos, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

Each general commercial liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

- i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations.
- ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
- iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.
- v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
- vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

Developer or its Designee shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of any Work at the Park. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

Section 8. No Real Property Interest. It is expressly understood that this License does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Park to Developer.

Section 9. Counterparts. This License may be executed in counterparts, each of which so executed shall be deemed an original, and such counterparts together shall constitute but one agreement.

Section 10. Integration; Entire Agreement. This License constitutes the entire agreement among the parties hereto pertaining to the City's express grant of right of entry for the purposes of Developer carrying out the Work and supersedes any and all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties as to such right of entry. No supplement or modification of this License or any provisions hereof shall be binding unless executed in writing by the parties; provided however that another licensed general contractor that is

an experience builder of park improvements and is otherwise qualified to implement the Agreement may be substituted for McMillin Real Estate Services, L.P. at the reasonable discretion of McMillin Summerly, LLC.

Section 11. Cooperation. The parties agree to fully cooperate in carrying out the intent of this License and shall execute all documents reasonably necessary to that end. The court may order any party to execute any document necessary to carry out the terms and provisions of this License.

Section 12. Notices. All notices, requests, demands and other communications (“Notice”) called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or within two (2) days after having been mailed by United States certified or registered mail, postage prepaid, addressed to the parties, their successors-in-interest or their permitted assigns at the following addresses, or at such other addresses as the parties may designate by written notice in the manner aforesaid:

City:

City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attn: City Manager

With copy to:

Leibold McClendon & Mann, P.C.
22422 Mill Creek Drive
Suite 105
Laguna Hills, CA 92653
Attn: Barbara Z. Leibold, Esq.

Developer:

McMillin Summerly LLC
c/o The Corky McMillin Companies
2750 Womble Road, Suite 200
San Diego, CA 92106
Attn: Brian Milich

With copy to:

Friedman Stroffe & Gerard, P.C.
19800 MacArthur Boulevard, Suite 1100
Irvine, CA 92612-2425
Attn: James D. Stroffe, Esq.

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

Section 13. No Adverse Interpretation to Drafter. This License was prepared and negotiated in an arm's length negotiation in which both Parties were represented by attorneys and the attorneys for each party were involved in the drafting of the License. As such, neither party can be identified as the drafter of this License and the language used in this License shall be deemed to be the language chosen by the Parties hereto to express their mutual intent and no rule of strict construction will be applied against either party.

Section 14. No Third Party Beneficiary. No person or entity other than City, Developer and the permitted successors and assigns of each of them shall be authorized to enforce the provisions of this License.

Section 15. Governing Law. This License shall be governed by the laws of the State of California. Any legal action brought under this License must be instituted in the Superior Court of Riverside County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 16. Attorney's Fees. In the event that any action or suit is instituted by either party against the other arising out of this License, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney's fees.

Section 17. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this License by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's rights to insist and demand strict compliance by the other party with the terms of this License.

Section 18. Severability. The invalidity, in whole or in part, of any provision of this License shall not affect the validity or enforceability of any other of its provisions.

IN WITNESS WHEREOF, the parties have executed this License as of the respective date set forth below.

Dated: _____, 20__

Dated: _____, 20__

“CITY”

CITY OF LAKE ELSINORE,
a California municipal corporation

By: _____
City Manager

ATTEST:

By: _____
Virginia J. Bloom, City Clerk

Approved as to Form:

LEIBOLD McCLENDON & MANN,
P.C.

By: _____
Barbara Leibold, City Attorney

“DEVELOPER”

MCMILLIN SUMMERLY LLC, a Delaware
limited liability company (“**Developer**”)

By: McMillin Real Estate Services, L. P., a
California limited partnership

Its: Administrative Manager

By: MCM Real Estate Group, Inc., a
California corporation

Its: General Partner

By: _____

Its: _____

By: _____

Its: _____

Dated: _____, 20__

MCMILLIN REAL ESTATE SERVICES, L. P., a
California limited partnership (“**Developer**”)

By: MCM Real Estate Group, Inc., a
California corporation

Its: General Partner

By: _____

Its: _____

Approved as to Form:

FRIEDMAN STROFFE & GERARD, P.C.

By: _____
James D. Stroffe, Esq.,
Attorney for Developer