



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Grant Yates, City Manager

Prepared by: Barbara Leibold, City Attorney

Date: July 10, 2018

Subject: Periodic Review - First Amended and Restated Development Agreement (Summerly)

Recommendation

That the City Council find McMillin Summerly LLC in good faith compliance with the terms of the First Amended and Restated Development Agreement.

Background

On August 24, 2004 City entered into the First Amended and Restated Development Agreement ("Summerly DA") with Laing-CP Lake Elsinore ("Original Developer"), which recorded on December 17, 2004 in the Official Records of Riverside County, California as Instrument Number 1001282, with respect to Original Developer's development of a residential planned community, parks, a golf course and related infrastructure ("Summerly Project") on certain property within the East Lake Specific Plan ("ELSP") referred to in the Summerly DA as the Developer Property.

On or about June 2010, Developer acquired the Developer Property from Bank of America, N.A. as successor in interest to Original Developer with respect to the Developer Property, and is the assignee of all of Original Developer's right, title and interest in and to the Summerly DA.

The Summerly DA and the Chapter 19.12 of the Lake Elsinore Municipal Code require periodic review of development agreements to determine good faith compliance with the terms of the agreement. The Developer and the City commenced the periodic review of the Summerly DA in 2016 and the Developer submitted a Report of Good Faith Compliance (Exhibit "A"). However, in the course of this administrative review, certain limited disputes arose between the City and Developer relating to the implementation and interpretation of the Summerly DA. As a result of those disputes, the periodic review was postponed and the City and the Developer entered into settlement negotiations.

Discussion

The City and the Developer entered into a Settlement Agreement and release dated April 24, 2018 which resolved the disputes under the Summerly DA. Pursuant to the Settlement Agreement and Release, the City and the Developer have also entered into a Second Operating Memorandum Of Understanding dated June 4, 2018 and a First Amendment To Amended and Restated Park Implementation Agreement dated June 4, 2018. On June 7, 2018, the Developer remitted \$1.5 million to the City in accordance with the Settlement Agreement and Release.

In addition to the resolution of disputes documented in the Settlement Agreement and implementing documents, the Summerly Project continues to develop. Since submittal of the Developer's 2016 Good Faith Compliance Report, the Developer has completed Phase D evidenced by recordation of the Release of Project Development Covenants on March 13, 2018, and has commenced Phases E and F. The Developer has obtained issuance of more than 1,000 building permits for residential dwelling units within the Summerly Project and that the First Extension Term was automatically extended for five years to February 24, 2027 ("Second Extension Term") as provided in Section 8 of the Summerly DA.

Under the terms of the Summerly DA, the Developer is required to comply with all applicable city, state and federal laws, regulations and permits. The City acknowledges that the Developer is working with the ACOE and CDFW to update and revise the applicable 404 Permit and 1602 Agreement.

Fiscal Impact

None.

Exhibits

Exhibit A—Developer's Good Faith Compliance Report