

RECORDING REQUESTED BY:
THE CITY OF INDIAN WELLS

WHEN RECORDED MAIL TO:
CHIEF DEPUTY CITY CLERK
CITY OF INDIAN WELLS
44-950 ELDORADO DRIVE
INDIAN WELLS, CA 92210

DOC # 2006-0460152

06/26/2006 08:00A Fee:NC

Page 1 of 11

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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AGREEMENT

BETWEEN

THE CITY OF INDIAN WELLS

AND

SANDERSON J. RAY - INDIAN WELLS, LLC

TOWN CENTER SP- PA 2, CONDO HOTEL SITE



AN AGREEMENT BETWEEN THE CITY OF INDIAN WELLS AND SANDERSON J. RAY A CALIFORNIA LIMITED LIABILITY COMPANY, LLC CONCERNING ISSUANCE OF GRADING PERMIT

This Agreement For Issuance of Grading Permit ("Agreement") is entered into this 22nd day of June, 2006, by and between the City of Indian Wells, a charter city and municipal corporation of the State of California the ("City") and Sanderson J. Ray – Indian Wells, LLC, a California Limited Liability Company having offices in 2699 White Road, Irvine CA 92614 (the "DEVELOPER"). The City and the Developer are sometimes hereinafter each referred to as "PARTY", and sometimes hereinafter collectively referred to as "PARTIES".

The City and the Developer agree as follows:

SECTION 1 Recitals. The Developer desires and intends to undertake grading on certain property owned by the Developer described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

The Developer desires and intends to obtain from the City a permit to enable the Developer to commence grading on the Property (the "Grading Permit"). The City desires and intends to issue the Grading Permit to the Developer, subject to the conditions set forth hereinafter.

SECTION 2. Issuance of Grading Permit. The City agrees to issue a Grading Permit to the Developer for purposes of grading on the Property in accordance with the plans and specifications submitted to the City dated June 6, 2006 entitled Mass Grading Plan (Pages 1 and 2), as set forth in Exhibit "B", and the Developer agrees to accept the issuance of the Grading Permit, subject to the terms and conditions set forth herein, in addition to any and all terms and conditions typically and ordinarily set forth in such a permit by the City to such permittees.

SECTION 3. Limitation on Rights Under Grading Permit. The City and the Developer understand and agree that the Grading Permit is issued by the City to the Developer subject to the condition that the issuance of the Grading Permit does not constitute or establish an entitlement or vested right in favor of the Developer or the Property to develop the Property in any specific manner or in accordance with requirements and/or standards set forth in the Indian Wells Municipal Code as of the date of issuance of the Grading Permit. Instead, the Developer understands and agrees that the issuance of the Grading Permit only entitles the Developer to proceed with grading on the Property in accordance therewith and that the Developer and its successors in interest shall not be entitled to any other land use entitlements or approvals unless granted by the City acting in its discretion. Any and all future land use applications submitted by the Developer to the City shall be subject to any and all terms and provisions set forth in the Indian Wells Municipal Code then in effect which may be applicable to any such application.

**AN AGREEMENT BETWEEN THE CITY OF INDIAN WELLS AND SANDERSON J.
RAY A CALIFORNIA LIMITED LIABILITY COMPANY, LLC CONCERNING
ISSUANCE OF GRADING PERMIT**

SECTION 4. Payment of Fees. The Property is located within the historical range ("Mitigation Fee Area") of the Coachella Valley Fringe Toed Lizard ("CVFTL"), a threatened species under the provisions of the Endangered Species Act 16 U.S.C. 1531-43 (1973) (the "Act"). The United States Fish and Wildlife Service has approved the issuance of a permit pursuant to Section 10(a) of the Act ("Section 10(a) Permit") which allows incidental taking of the CVFTL, on the condition that development of property within the Mitigation Fee Area be assessed a fee as mitigation for such incidental taking ("Mitigation Fee"). The Section 10(a) Permit was further implemented by that certain agreement by and among the United States Fish and Wildlife Service, and certain other entities including the City dated April 21, 1986, as amended from time to time, which requires the payment of such Mitigation Fee prior to the issuance of a building or grading permit for property located within the Mitigation Fee Area. Developer has paid a Mitigation Fee as a condition to the issuance of the Grading Permit. Notwithstanding Section 3, and to the extent not otherwise required by a court of competent jurisdiction, City may not collect the same or similar fee as a later condition of any ministerial or discretionary approvals associated with the development of the Property.

SECTION 5. Binding on Successors; Recordation This Agreement is binding on the Developer and its successors in interest in and to the Property. As used in this Agreement, the term "Developer" shall be deemed to include, without limitation, any and all successors in interest in and to the Property. The Developer shall cause this Agreement to be recorded against the Property in the Office of the Recorder for the County of Riverside.

SECTION 6. Indemnification. The Developer, on behalf of itself and its successors in interest in and to the Property, hereby releases City and its officials, officers, employees and agents from any claim of damages by Developer as a result of this Agreement or any part hereof being determined unenforceable by final judicial determination and shall defend, indemnify, and hold harmless the City and its officials, officers, employees and agents from and against any and all legal or administrative challenges by any other person or entity with respect to the enforceability and/or implementation of this Agreement; provided, however that Developer may, acting in its sole and absolute discretion, settle any such action as long as such settlement causes no cost or expense to be incurred by the City.

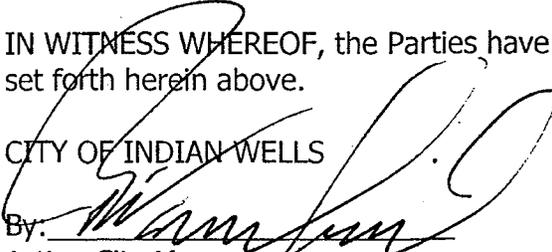


2006-0460152
06/26/2006 08:00A
3 of 11

AN AGREEMENT BETWEEN THE CITY OF INDIAN WELLS AND SANDERSON J. RAY A CALIFORNIA LIMITED LIABILITY COMPANY, LLC CONCERNING ISSUANCE OF GRADING PERMIT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth herein above.

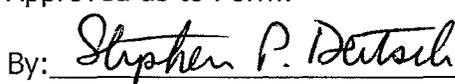
CITY OF INDIAN WELLS

By: 
Acting City Manager *TIM WASSIL*

Attest:

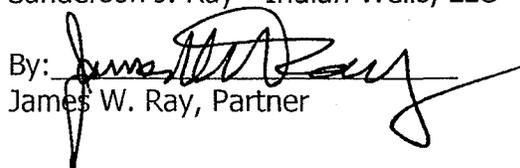
By: 
Chief Deputy City Clerk

Approved as to Form:

By: 
City Attorney

DEVELOPER

Sanderson J. Ray - Indian Wells, LLC

By: 
James W. Ray, Partner



2006-0460152
06/26/2006 08:00A
4 of 11

Exhibit "A"
Legal Description



2006-0460152
06/26/2006 08:00A
5 of 11

EXHIBIT "A"
LEGAL DESCRIPTION

Real property in the City of Indian Wells, County of Riverside, State of California, described as follows:

PARCELS 1, 3 AND 4 AS SHOWN BY PARCEL MAP NO. 28833 ON FILE IN BOOK 195 PAGE(S) 10 THROUGH 15 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM AN UNDIVIDED 15/16THS OF ALL OIL, GAS, MINERAL AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, AS RESERVED BY HOWARD CHARTER, IN DEED RECORDED JULY 23, 1956 IN BOOK 1947 PAGE 92 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/16TH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED BY THE STATE OF CALIFORNIA IN PATENT RECORDED MARCH 25, 1930, IN BOOK 9 PAGE 442 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS PROVIDED BY AN ACT OF THE LEGISLATURE, APPROVED MAY 25, 1921 (CHAPTER 303, STATUTES OF CALIFORNIA, 1921) AND RESERVED IN THAT CERTAIN PATENT RECORDED MAY 12, 1928 IN BOOK 9, PAGE(S) 310 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPTING THEREFROM ANY INTEREST IN THAT CERTAIN UNLOCATED 20.00 FOOT SQUARE WELL SITE REFERRED TO IN DEED FORM HARRY L. BOYNTON, ET UX, TO JOHN D. CARTER, DATED MARCH 20, 1930 IN BOOK 859 PAGE 118 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.



Exhibit "B"
Mass Grading Plan



2006-0460152
06/26/2006 08:00A
7 of 11

IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

MASS GRADING PLAN FOR INDIAN WELLS TOWN CENTER

June 06, 2006

EARTHWORK QUANTITIES

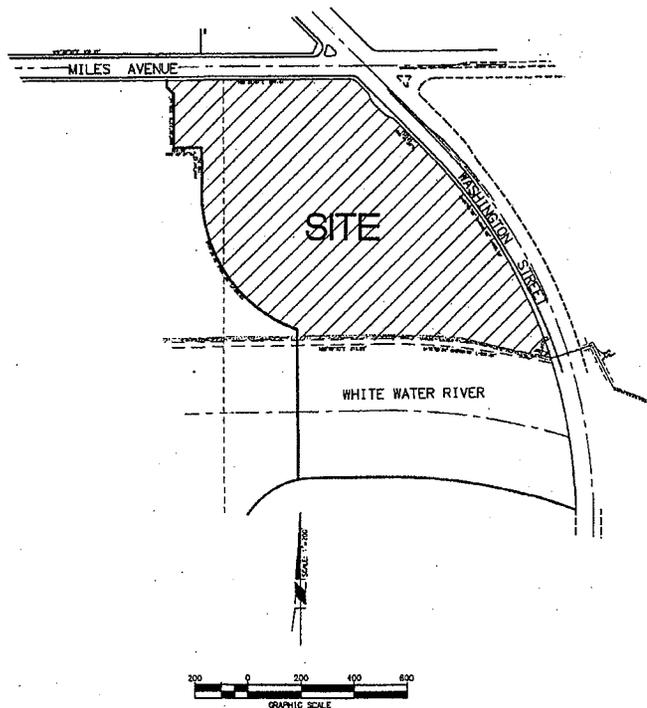
27,600 C.Y. CUT
54,370 C.Y. FILL

OWNER/APPLICANT

Sanderson J. Roy Development
2699 White Road, Suite 150
Irvine, CA 92614

GRADING NOTES

- ALL WORK SHALL CONFORM TO THE CITY OF INDIAN WELLS MUNICIPAL CODE, THE ADOPTED UNIFORM BUILDING CODE, AND THE LATEST EDITION OF THE STANDARD SPECIFICATIONS OF PUBLIC WORKS CONSTRUCTION.
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THE LOCATION OF ALL UTILITIES OR STRUCTURES ABOVE OR BELOW GROUND SHOWN OR NOT SHOWN ON THESE PLANS. THE CONTRACTOR WILL BE HELD RESPONSIBLE FOR ALL DAMAGE TO ANY UTILITIES OR STRUCTURES CAUSED BY HIS OR HER OPERATIONS.
- ADJACENT STREETS ARE TO BE CLEANED DAILY OF ALL DIRT AND DEBRIS THAT ARE THE RESULT OF THIS OPERATION.
- DUST SHALL BE CONTROLLED BY WATERING OR OTHER APPROVED METHODS.
- WORKING HOURS SHALL BE AS FOLLOWS:
7:00 AM - 5:00 PM MONDAY THROUGH FRIDAY
8:00 AM - 5:00 PM SATURDAYS (SATURDAY WORK MUST BE APPROVED IN ADVANCE BY THE INDIAN WELLS PLANNING DIRECTOR OR CITY ENGINEER)
NO WORK ON SUNDAYS OR ON HOLIDAYS OBSERVED BY THE CITY OF INDIAN WELLS AS FOLLOWS: NEW YEAR'S DAY, MARTIN LUTHER KING DAY, PRESIDENT'S DAY, MEMORIAL DAY, INDEPENDENCE DAY (4TH JULY), LABOR DAY, VETERAN'S DAY, THANKSGIVING DAY, DAY AFTER THANKSGIVING DAY, AND CHRISTMAS DAY.
- A PRE-GRADING MEETING MAY BE REQUIRED FOR THIS PROJECT. THE CITY PUBLIC WORKS DEPARTMENT SHALL BE CONTACTED AT (760) 778-1237, 48 HOURS PRIOR TO COMMENCEMENT OF GRADING TO SCHEDULE A PRE-GRADING MEETING, IF REQUIRED.
- ALL GRADING SHALL BE COMPLETED UNDER THE SUPERVISION OF A COMPETENT SOILS ENGINEER IN CONFORMANCE WITH THE RECOMMENDATIONS OF THE PRELIMINARY SOILS INVESTIGATION PERFORMED BY _____ (DATE)
- ONE SET OF FINAL SOILS REPORT SHALL BE SUBMITTED TO THE BUILDING OFFICIAL FOR REVIEW AND APPROVAL PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. THE SOILS REPORT SHALL REFLECT THE FACT THAT ADEQUATE COMPACTION HAS BEEN OBTAINED NOT ONLY IN BUILDING PAD LOCATIONS BUT ALSO IN THE REMAINDER OF THE SITE INCLUDING THE SLOPES. A FINAL SOILS GRADING CERTIFICATION SHALL BE SUBMITTED BY THE SOILS ENGINEER CERTIFYING THAT THE FINAL GRADING CONFORMS TO BOTH CHAPTER 33 OF THE UBC AND THE APPROVED PRELIMINARY GRADING PLAN.
- ALL SLOPES SHALL BE A MAXIMUM OF 2 TO 1 CUT OR FILL.
- ALL PADS AND SHALES SHALL SLOPE A MINIMUM OF 0.5% TO STREET OR APPROVED DRAINAGE DEVICE.
- ALL TRENCH BACKFILLS SHALL BE TESTED AND CERTIFIED BY THE SOILS ENGINEER TO A MINIMUM OF 90% MAXIMUM DENSITY.
- SEPARATE PERMITS SHALL BE REQUIRED FOR ANY IMPROVEMENT WORK INCLUDING DRIVEWAYS WITHIN THE PUBLIC RIGHT-OF-WAY.
- CUT SLOPES GREATER THAN 5 FEET IN VERTICAL HEIGHT AND FILL SLOPES GREATER THAN 3 FEET IN VERTICAL HEIGHT SHALL BE PLANTED WITH APPROVED GROUND COVER TO PROTECT THE SLOPE FROM EROSION AND INSTABILITY IN ACCORDANCE WITH THE PROJECT'S CONDITIONS OF APPROVAL.
- SEPARATE PERMITS FROM THE BUILDING AND SAFETY DEPARTMENT SHALL BE REQUIRED FOR ALL WALLS.
- ALL SLOPES ADJACENT TO THE PUBLIC RIGHT-OF-WAY SHALL BE SET BACK 2 FEET IF THE HEIGHT IS LESS THAN 10 FEET, AND 3 FEET IF THE HEIGHT IS GREATER THAN 10 FEET.
- REPAIR OR REPLACE DAMAGED OR ALTERED PUBLIC IMPROVEMENT AS REQUIRED BY THE CITY ENGINEER.
- AN "AS-BUILT GRADING PLAN" SHALL BE SUBMITTED AT THE COMPLETION OF WORK.
- A PAD CERTIFICATION STATING THAT THE SITE CONFORMS TO THIS PLAN AS TO LINE AND GRADE AND GRADE SHALL BE SUBMITTED BY THE ENGINEER OF RECORD (P.E. OR P.L.S.) PRIOR TO ISSUANCE OF A BUILDING PERMIT.
- THE PRIVATE ENGINEER SIGNING THESE PLANS IS RESPONSIBLE FOR ASSURING THE ACCURACY AND ACCEPTABILITY OF THE DESIGN HEREON. IN THE EVENT OF DISCREPANCIES ARISING DURING CONSTRUCTION, THE PRIVATE ENGINEER SHALL DETERMINE AN ACCEPTABLE SOLUTION, AND SUBMIT REVISED PLANS FOR APPROVAL BY THE CITY.



SHEET INDEX

SHEET No.	DESCRIPTION
1	TITLE SHEET
2	MASS GRADING

NOTE:

SOILS REPORT IS TO BE SUBMITTED AND APPROVED BY THE CITY ENGINEER PRIOR TO COMMENCEMENT OF GRADING.



<p>IMPORTANT NOTES: CALL BEFORE YOU DIG THE CITY OF INDIAN WELLS HAS A CITY-OWNED UTILITY RECORDING SYSTEM. CONTRACTORS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK. THE CITY ENGINEER OF RECORD SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.</p>	<p>UNAUTHORIZED CHANGES & USES: NO PART OF THIS PLAN SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER OF RECORD. ENGINEER'S NOTE TO CONTRACTOR: CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK. CONTRACTOR'S NOTE TO ENGINEER: CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK. CONTRACTOR'S NOTE TO ENGINEER: CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.</p>	<p>REVISIONS</p>	<p>DATE</p>	<p>APP. (DRAWING NUMBER)</p>	<p>ELEVATION OF (SHEET)</p>	<p>RBF CONSULTING PLANNING & DESIGN & CONSTRUCTION 7910 COUNTY CLIVE DRIVE, SUITE 200 PALM DESERT, CALIFORNIA 92260 TEL: 760/325-1111 FAX: 760/325-1111</p>	<p>APPROVED UNDER THE DIRECTION SUPERVISION OF:</p> <p>DATE: 6/6/06</p>	<p>APPROVED FOR APPROVAL BY:</p> <p>DATE: 6/6/06</p>	<p>CITY OF INDIAN WELLS</p> <p>PROJECT: MASS GRADING PLAN DESCRIPTION: FOR INDIAN WELLS TOWN CENTER SITE ADDRESS: SOUTH OF MILES AVENUE LOCAL DESCRIPTION: PARCEL 4 OF PL 28832 SHEET: 1 OF 2</p>	<p>SHEET 1 OF 2</p> <p>PLANNING & DESIGN & CONSTRUCTION</p>
		<p>DATE: 6/6/06</p>	<p>DATE: 6/6/06</p>	<p>DATE: 6/6/06</p>	<p>DATE: 6/6/06</p>					



2006-0460152
06/26/2006 08:00R
8 of 11

11. V:\PLANS\2006\INDIAN WELLS TOWN CENTER\MASS GRADING\0606-0460152-001.DWG 11/22/06 2:24 PM

ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

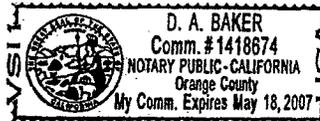
On 6-24-2006 before me, D. A. Baker, Notary Public
personally appeared James W. Ray

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

D. A. Baker



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type _____

Number of Pages _____ Date of Document _____

Signer(s) Other Than Named Above _____



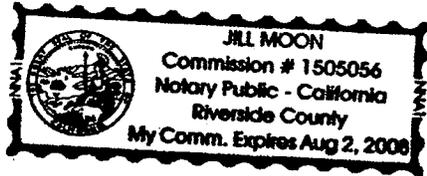
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Riverside } ss.

On June 23, 06 before me, Jill Moon, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Timothy T. Wassil
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Jill Moon
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

