

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 # 2006-0460151

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

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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 1, RETAIL 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.



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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.

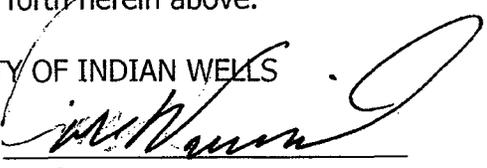
SECTION 5. Binding on Successors; Recordation This Agreement is binding on the Developer and its successors in interest in and to the Property. As used in this Agreement, the term "Developer" shall be deemed to include, without limitation, any and all successors in interest in and to the Property. The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

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.

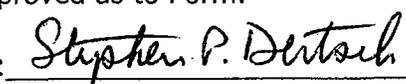
CITY OF INDIAN WELLS

By: 
Acting City Manager *TIM WASSIL*

Attest:

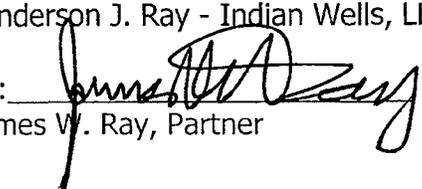
By: 
Chief Deputy City Clerk

Approved as to Form:

By: 
City Attorney

DEVELOPER

Sanderson J. Ray - Indian Wells, LLC

By: 
James W. Ray, Partner



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Exhibit "A"
Legal Description



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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



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ACKNOWLEDGMENT

State of California
County of Orange

On 6-24-06 before me, D. A. Baker, notary public
(here insert name and title of the officer)

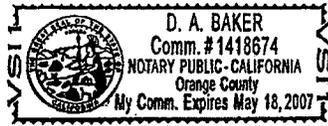
personally appeared James W. Ray

[Signature]

~~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 [Signature]



(Seal)

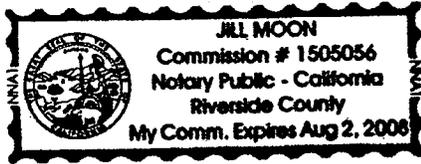
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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/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.

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: _____

