

## GRADING ONLY AGREEMENT

DATE OF AGREEMENT: \_\_\_\_\_, 20\_\_\_\_.

NAME OF OWNER/DEVELOPER Meritage Homes of California, Inc.  
(referred to as "GRADER")

PROPERTY (MAP AND PARCEL NO.): Tract Map No. 37506-3 No. of Lots: 146  
(referred to as "PROPERTY")

For complete legal description see Exhibit "B" attached hereto.

GRADING PLANS APPROVED ON:  
(referred to as "GRADING PLANS")

TENTATIVE MAP RESOLUTION OF APPROVAL NO.: 2745 (TM No: 37506)  
(referred to as "Resolution of Approval")

ESTIMATED TOTAL COST OF GRADING: \$ 1,860,157.

\$  
ESTIMATED TOTAL COST OF PUBLIC IMPROVEMENTS GRADING WORK (as  
defined in Section 2(a)(2)): \$ 390,931.00.

ESTIMATED TOTAL COST OF PRIVATE IMPROVEMENTS GRADING WORK (as  
defined in Section 2(a)(1)): \$ 1,469,226.00.

ESTIMATED TOTAL COST OF PM10 MITIGATION MEASURE: \$ 80,834.  
(as defined in Section 1(a))

SURETY:

BOND NOS: LICX1983077

SURETY: Lexon Insurance Company

-OR-

IRREVOCABLE STAND-BY LETTER OF CREDIT NO. \_\_\_\_\_

FINANCIAL INSTITUTION: \_\_\_\_\_

-OR-

CASH/CERTIFICATE OF DEPOSIT, AGREEMENT DATED: \_\_\_\_\_

FINANCIAL INSTITUTION: \_\_\_\_\_

This Agreement is made and entered into by and between the City of Palm Desert, a municipal corporation of the State of California, hereinafter referred to as "CITY", and the GRADER.

### RECITALS

A. In consideration of the approval of the Grading Plans for the PROPERTY by the City Council, GRADER desires to enter into this Agreement, whereby GRADER promises to complete, at GRADER's own expense, all the grading work required by CITY in connection with the proposed PROPERTY. GRADER has secured this Agreement by grading security required by the City and approved by the City Attorney.

B. In connection with GRADER's proposed development of the PROPERTY, a tentative map to subdivide the PROPERTY has been approved, subject to the Subdivision Map Act and the CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps (collectively, the "Subdivision Laws") and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the Office of the City Clerk and is incorporated into this Agreement by reference.

C. The Resolution of Approval includes certain conditions required to be satisfied by GRADER in connection with the issuance of grading permits. The public improvement work (excluding grading and park improvements) required by the Resolution of Approval and the Subdivision Laws is subject to a separate secured agreement (i.e., Subdivision Improvement Agreement), and the required park improvement work is subject to a separate secured agreement between GRADER and CITY (i.e., Parks Improvement Agreement) .

D. GRADING PLANS for the grading of the PROPERTY have been prepared by GRADER and approved by the City Engineer (the "Plan Approval"). As used in this Agreement, "City Engineer" means the Acting City Engineer of CITY, or if there is no City Engineer, then other CITY official then performing the functions of the City Engineer. The GRADING PLANS numbered as referenced previously in this Agreement are on file in the Office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the GRADING PLANS shall include reference to any specifications for the improvements as approved by the City Engineer.

E. An estimate of the cost for grading and performing land development work in connection with the grading according to the GRADING PLANS has been made and has been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement. The basis for the estimate is attached as Exhibit "A" to this Agreement.

F. CITY has adopted standards for the grading of property within the CITY. The GRADING PLANS have been prepared in conformance with CITY standards in effect on the date of the approval.

G. GRADER recognizes that CITY and adjacent properties may be damaged by GRADER's failure to perform its obligations to complete approved grading by the time established in this Agreement. CITY shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of a default by GRADER.

**NOW, THEREFORE,** in consideration of the approval by the City of the GRADING PLANS, GRADER and CITY agree as follows:

(1) GRADER's Obligation to Complete Grading.

GRADER shall:

(a) Comply with all the requirements of the Resolution of Approval relating to grading or the issuance of grading permits, and any amendments thereto. Without limiting the foregoing, GRADER hereby agrees to install a sprinkler system or equivalent long-term mitigation measure for PM10 if the PROPERTY site is mass graded and subsequently left undeveloped for more than six (6) months (the "PM10 Mitigation Measure").

(b) Complete at GRADER's own expense, all the grading required by the Plan Approval in conformance with approved GRADING PLANS within one year from date of execution of this Agreement; provided however, that the grading shall not be deemed to be completed until approved by City Engineer as provided in Section 4 herein.

(2) Security.

(a) GRADER shall at all times guarantee GRADER's performance by furnishing to CITY, and maintaining, good and sufficient security as required by the CITY on forms approved by CITY for the purposes and in the amounts as follows:

(1) to assure faithful performance of this Agreement in regard to said grading in an amount of 100% of the estimated cost of the grading; provided that separate securities shall be provided to assure faithful performance of the Public Improvements Grading Work (as defined in subsection (a)(2) below), on one hand, and the portion of work under the GRADING PLANS relating to the construction of private and all other improvements (including but not limited to improvements owned by a

homeowners association) (the "Private Improvements Grading Work"), on the other hand; and

(2) to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the portion of work under the GRADING PLANS that is grading in support of the construction of any off-site and on-site public improvements required by the Resolution of Approval (the "Public Improvements Grading Work"), in an amount of 100% of the estimated cost of said Public Improvements Grading Work and conforming to the requirements of Section 17 of this Agreement (concerning prevailing wages) and Section 9554 of the California Civil Code (to the extent that a subject contract involves an expenditure in an amount subject to, and a contractor deemed to be a direct contractor under, Section 9550 of the California Civil Code), and which amount of such security shall be increased automatically by the GRADER upon an increase in the cost of the Public Improvements Grading Work or any of it, such that the payment bond(s) at all times shall be in an amount not less than 100% of the sum of the total amount payable pursuant to any construction contract(s) for the Public Improvements Grading Work and the estimated cost of any Public Improvements Grading Work not yet subject to a construction contract, and if the GRADER fails to so increase the amount of the security in connection with such an increase in costs of Public Improvements Grading Work, the GRADER shall provide the additional security within thirty (30) days after receiving demand from the City Engineer therefor.

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by

another approved security, the replacement shall: (i) comply with all the requirements for security in this Agreement; (ii) be provided to the City Engineer to be filed with the City Clerk and, upon filing, (iii) shall be deemed to have been made a part of and incorporated into this Agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

(b) To assure faithful performance of this Agreement in regard to the PM10 Mitigation Measure, GRADER shall post a cash deposit with CITY's Finance Director in an amount equal to 100% of the estimated cost of the PM10 Mitigation Measure. If written notice of default with respect to GRADER's obligation to install the PM10 Mitigation Measure has been given by CITY to GRADER pursuant to Section 8 of this Agreement and if the default is not corrected within the time specified therein, CITY shall be entitled hereunder and pursuant to Section 8 to proceed without delay and without further notice of proceedings whatever to use the cash deposit or any portion of such deposit to complete the required work. In the event that CITY proceeds pursuant to the foregoing sentence to complete the PM10 Mitigation Measure work, the balance, if any, of the cash deposit shall, upon completion of the precise grading and subject to Section 5(c) of this Agreement, be returned by CITY to GRADER, or to its successors or assigns after deducting the cost of the work. Subject to the foregoing provisions of this subsection, the cash deposit may be returned at the completion of the precise grading.

(3) Alterations to GRADING PLANS.

(a) Any changes, alterations or additions to the GRADING PLANS not exceeding ten percent (10%) of the original estimated cost of the improvements, which are mutually agreed upon by CITY and GRADER, shall not relieve the improvement

security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvement, GRADER shall provide grading security for faithful performance as required by Section (2) of this Agreement for twenty-five percent (25%) of the total estimated cost of the grading as changed, altered, or amended, minus any completed partial releases allowed by Section (5) of this Agreement.

(b) Any changes, alterations or additions to the GRADING PLANS, which are mutually agreed upon by CITY and GRADER, shall not relieve the security given to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Public Improvements Grading Work. In the event of any changes, alterations, or additions that increase the estimated cost of the Public Improvements Grading Work or any of it above the original estimated cost of the Public Improvements Grading Work, GRADER shall provide security to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Public Improvements Grading Work as required by Section (2) of this Agreement for one hundred percent (100%) of the total estimated cost of the Public Improvements Grading Work as changed, altered, or amended, minus any completed partial releases allowed by Section (5) of this Agreement.

(c) Any changes, alterations or additions to the PM10 Mitigation Measure not exceeding ten percent (10%) of the original estimated cost of the PM10 Mitigation Measure, which are mutually agreed upon by CITY and GRADER, shall not relieve the cash deposit posted as security for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the PM10 Mitigation Measure, GRADER shall supplement the cash

deposit for faithful performance as required by Section (2) of this Agreement to bring the total cash deposit held by the CITY as security for the PM10 Mitigation Measure to an amount equal to one hundred percent (100%) of the total estimated cost of the PM10 Mitigation Measure as changed, altered, or amended, minus any completed partial releases allowed by Section (5) of this Agreement.

(d) The GRADER shall complete the grading in accordance with CITY standards in effect at the time of approval of GRADING PLANS. CITY reserves the right to modify the standards applicable to the PROPERTY and this Agreement, when necessary to protect the public safety or welfare or comply with applicable state or federal law or CITY zoning ordinances. If GRADER requests and is granted an extension of time for completion of the grading, CITY may apply the standards in effect at the time of the extension.

(4) Inspection. GRADER shall at all times maintain proper facilities and safe access for inspection of the grading by CITY inspectors. Upon completion of the work, GRADER may request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the grading. When applicable law requires an inspection to be made by City at a particular stage of the grading, CITY shall be given timely notice of GRADER's readiness for such inspection and GRADER shall not proceed with additional work until the inspection has been made and the work approved. GRADER shall bear all costs of inspection and certification.

(5) Release of Securities. The securities required by this Agreement shall be released as following:



(a) Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and approval of the act or work; provided, release of the cash deposit posted by GRADER to assure faithful performance of this Agreement in regard to the PM10 Mitigation Measure shall be governed by and in accordance with the terms and provisions of Section 2(b) of this Agreement and subsection (c) of this Section 5.

(b) Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment with respect to the Public Improvements Grading Work shall, at the date that is the latest of (i) six (6) months after completion and acceptance of the applicable public improvement, (ii) fifteen (15) days following the expiration of the applicable statutory period in which any person may bring suit against the surety(ies) on a payment bond as set forth in Sections 8609 or 9558 of the California Civil Code, or (iii) fifteen (15) days following the expiration of the applicable statutory period in which any person may record a lien pursuant to Sections 8412 or 8414 of the California Civil Code, be reduced to an amount equal to no less than 125% of the total claimed by all claimants for whom liens or suit have been filed and of which notice has been given to the CITY, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the Security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

(c) CITY may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

(6) Injury to Public Improvements, Public Property or Public Utilities Facilities. GRADER shall replace or repair or have replaced or repaired, as the case may be, all

public improvements, public utilities facilities and surveying or property monuments which are destroyed or damaged as a result of any work under this Agreement. GRADER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

(7) Permits. GRADER shall, at GRADER's expense, obtain all necessary permits and licenses for the grading, give all necessary notices and pay all fees and taxes required by law.

(8) Default of GRADER.

(a) Default of GRADER shall include, but not be limited to,

(1) GRADER's failure to timely commence the grading;

(2) GRADER's failure to timely complete grading;

(3) GRADER's failure to timely cure any defect in the grading;

(4) GRADER's failure to perform substantial work for a period of twenty (20) calendar days after commencement of the work;

(5) GRADER's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which GRADER fails to discharge within thirty (30) days;

(6) the commencement of a foreclosure action against the PROPERTY or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or

(7) GRADER's failure to perform any other obligation under this Agreement.

(b) CITY reserves to itself all remedies available to it at law or in equity for breach of GRADER's obligations under this Agreement. CITY shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate CITY's damages in event of default by GRADER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of grading and, therefore, CITY's damages for GRADER's default shall be measured by the cost of completing the required grading. The sums provided by the security may be used by CITY for the completion of the grading in accordance with the GRADING PLANS contained herein.

In the event of GRADER's default under this Agreement, GRADER authorizes CITY to perform such obligation twenty (20) days after mailing written notice of default to GRADER and to GRADER's surety, and agrees to pay the entire cost of such performance by CITY.

CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of GRADER, and GRADER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby. In such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances,

plants and other property belonging to GRADER as may be on the site of the work and necessary for performance of the work.

(c) Failure of GRADER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of notice of violation against the PROPERTY. The remedy provided by this subsection (c) is in addition to and not in lieu of other remedies available to CITY. GRADER agrees that the choice of remedy or remedies for GRADER's breach shall be in the discretion of CITY.

(d) In the event that GRADER fails to perform any obligation hereunder, GRADER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including but not limited to fees and charges of engineers, attorneys, other professionals, and court costs.

(e) The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of GRADER.

(9) GRADER Not Agent of CITY. Neither GRADER nor any of GRADER's agents, contractors or subcontractors are or shall be considered to be agents of CITY in connection with the performance of GRADER'S obligations under this Agreement.

(10) Indemnity/Hold Harmless. CITY or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of GRADER, its agents, or employees, contractors and subcontractors in the performance of this Agreement. GRADER further agrees to protect, defend, indemnify and hold harmless CITY, its officials, boards and commissions, and members thereof, agents and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of GRADER, its agents,

employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability, or loss arising out of the sole active negligence of the CITY, its officials, boards, commissions, the members thereof, agents, and employees, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the grading of the PROPERTY, and in addition, to adjacent property owners. Approval by CITY of the grading shall not constitute an assumption by CITY of any responsibility for any damage or taking covered by this Section. CITY shall not be responsible for the performance of grading, regardless of any negligent action or inaction taken by CITY in approving the plans, unless the particular design was specifically required by CITY over written objection by GRADER submitted to the City Engineer before approval of the particular grading design, which objection indicated that the particular grading design was dangerous or defective and suggested an alternative safe and feasible design.

In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any of the procedures leading to the adoption of the Resolution of Approval, the project approvals set forth therein or the project approvals themselves, or the terms of those approvals, including the failure to include specific terms, GRADER and CITY each shall have the right, in their sole discretion, to elect whether or not to defend such action. GRADER, at its sole expense, shall defend, indemnify, and hold harmless the CITY (including its agents, officers, and employees) from any such action, claim, damages, or proceeding of whatever nature with counsel

chosen by the CITY, subject to GRADER's approval of counsel, which shall not be unreasonably denied, and at GRADER's sole expense. If the CITY is aware of such an action or proceeding, it shall promptly notify GRADER and cooperate in the defense. GRADER, upon such notification, shall deposit sufficient funds in the judgment of the CITY's Finance Director to cover the expense of defending such action without any offset or claim against said deposit to assure that the CITY expends no CITY funds. If both parties to this Agreement elect to defend, the parties hereby agree to affirmatively cooperate in defending the said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under the applicable law. As part of the cooperation in defending an action, CITY and GRADER shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. GRADER and CITY shall each have sole discretion to terminate its defense at any time. CITY shall not settle any third party litigation arising from the Resolution of Approval, or the project approvals set forth therein, without GRADER's consent, which consent shall not be unreasonably withheld, conditioned or delayed unless GRADER materially breaches this indemnification requirement.

GRADER shall reimburse CITY for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by CITY in enforcing the provisions of this Section.

(11) Personal Nature of GRADER'S Obligations. All of GRADER's obligations under this Agreement are and shall remain the personal obligations of GRADER notwithstanding a transfer of all or any part of the property subject to this Agreement, and GRADER shall not be entitled to assign its obligations under this

Agreement to any transferee of all or any part of the property within the PROPERTY or to any other third party without the express written consent of CITY. If the CITY does consent to a transfer of this Agreement and the transferee assumes all of GRADER's obligations so transferred, GRADER shall be released of its transferred obligations hereunder, all as more specifically provided in an agreement to be entered into in connection with such transfer and in form and substance acceptable to the City Attorney.

(12) Sale or Disposition of PROPERTY. GRADER may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the GRADER may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the GRADER of the obligations under Section (10) for the work or improvement done by GRADER.

(13) Time of the Essence. Time is of the essence in the performance of this Agreement.

(14) Time for Commencement of Work; Time Extensions. GRADER shall commence substantial grading required by this Agreement not later than six (6) months after the date of this Agreement. In the event good cause exists as determined by the City Engineer, the time for commencement of grading hereunder may be extended for a period or periods not exceeding a total of two (2) additional years. The extension shall be executed in writing by the City Engineer. Any such extension may be granted without notice to GRADER's surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been

shown to entitle GRADER to an extension. Delay, other than delay in the commencement of work, resulting from an act of CITY, act of God, or by storm or inclement weather, strikes, boycotts or similar political actions which prevents the conducting of work, which GRADER could not have reasonably foreseen and, furthermore, were not caused by or contributed to by GRADER, shall constitute good cause for and extension of the time for completion. As a condition of such extension, the City Engineer may require GRADER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

(15) No Vesting of Rights. Performance by GRADER of this Agreement shall not be construed to vest GRADER's rights with respect to any change in any zoning or building law or ordinance.

(16) Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States mail. Notices shall be addressed as follows unless a written change of address is filed with the City:

Notice to CITY: City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, California 92260  
Attn: Development Services Director

Notice to GRADER: Meritage Homes of California, Inc.  
5 Peters Canyon Road, Suite 310  
Irvine, California 92606  
Attn: Efrem Joelson

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Notice to SURETY:

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(17) Compliance With Laws; Labor Code Provisions. GRADER, its agents, employees, contractors and subcontractors shall comply with all federal, state and local laws in the performance of the grading required by this Agreement.

The CITY hereby states pursuant to Section 1781 of the California Labor Code ("Labor Code") that the construction by the GRADER of any grading in support of the public streets and public parks or other public improvements required by the Conditions of Approval (as defined hereinbelow), including but not limited to the Public Improvements Grading Work, is "public work" (as defined in, and within the meaning of, Section 1720 of the Labor Code) to which Section 1771 of the Labor Code applies. While acknowledging but without expressing any concurrence with the position stated in the foregoing sentence, the GRADER hereby agrees that it shall (i) require the construction of public improvements required by the Conditions of Approval, including but not limited to the Public Improvements Grading Work, to be performed as "public work" to which Section 1771 of the Labor Code applies, and (ii) in furtherance of Section 1781(a)(2)(C) of the Labor Code, comply with all payment bonding requirements of the CITY with respect to such public improvements, including but not limited to the provision by the GRADER to the CITY of a payment bond with respect to each subject contract for the Public Improvements Grading Work or any of it (A) securing with respect to such contract the payment of claims of laborers (including but not limited to the payment of prevailing wages as required by this Section 17), material suppliers, and other persons

as provided by law, (B) conforming with the requirements of Section 9554 of the California Civil Code (to the extent that a subject contract involves an expenditure in an amount subject to, and a contractor deemed to be a direct contractor under, Section 9550 of the California Civil Code), and (C) naming the CITY as an obligee unto which the GRADER, as principal, and the surety are bound. In the event a contractor to whom the GRADER awards a contract for the Public Improvements Grading Work or any of it provides a payment bond meeting the foregoing requirements and also naming the GRADER as an additional obligee unto which the contractor, as principal, and the surety are bound, such contractor's payment bond shall be deemed as the provision by the GRADER of a payment bond hereunder.

As used in this Agreement, "Conditions of Approval" means, with respect to any portion of the real property within the PROPERTY, the conditions of approval of all land use entitlements approved by the CITY or any other governmental agency, including but not limited to the Resolution of Approval, and the conditions of this Agreement, any subdivision improvement agreement, and any development agreement, which conditions must be satisfied in order to develop such property.

Without limiting the foregoing, with respect to the Public Improvements Grading Work or any of it to be undertaken by GRADER or under the direction of GRADER hereunder, GRADER shall require the contractor and subcontractors to pay prevailing wages and to comply with all applicable prevailing wage laws pursuant to California Labor Code Sections 1720 et seq. and implementing regulations of the California Department of Industrial Relations. GRADER shall indemnify, defend, protect and hold harmless City, its agents, elected officials, officers, employees and independent consultants from and against any third party claim, cause of action, administrative or

judicial proceeding or enforcement action of any kind arising out of or resulting from GRADER or its contractors and subcontractors' alleged or actual failure to comply with prevailing wage law.

In addition, the GRADER agrees to require any person or entity to whom the GRADER sells the real property within the PROPERTY to comply with this Section 17.

Notwithstanding the foregoing, the CITY and the GRADER agree that (x) this Agreement is not intended to be a public works contract; (y) the subject public improvements are of local and not state-wide concern, and (z) the foregoing shall not in any way imply or be construed to mean that this Agreement or the subject public improvements constitute a public work for any purpose other than to assure compliance with the Labor Code.

(18) Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

(19) Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

(20) Litigation or Arbitration. In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.

(21) Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into in the terms of this Agreement.

(22) Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.

(23) Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

(24) Jurisdiction. Jurisdiction of all disputes over the terms of this Agreement shall be in the County of Riverside, State of California.

*[signature page follows]*

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date hereinabove first written; by CITY, by and through its Mayor.

GRADER:  
MERITAGE HOMES OF CALIFORNIA, INC.,  
a California Corporation

CITY OF PALM DESERT

By: \_\_\_\_\_

By: \_\_\_\_\_  
KARINA QUINTANILLA, MAYOR

Name: Nicholas Emsiek

Title: Division President

(Proper Notarization of GRADER's signature is required and shall be attached)

By: \_\_\_\_\_

Name: Elliot Mann

Title: West Region President

(Proper Notarization of GRADER's signature is required and shall be attached)

ATTEST:

\_\_\_\_\_  
ANTHONY J. MEJIA, MMC,  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

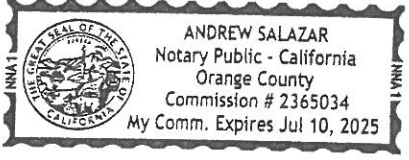
State of California }  
 } ss.  
County of Orange }

On October 30, 2024, before me, Andrew Salazar, a Notary Public, personally appeared Nicholas Emsiek, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

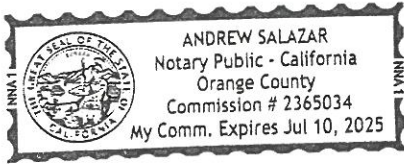
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Orange }

On October 31, 2024 before me, Andrew Salazar, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Elliot Mann  
*Name(s) of Signer(s)*

who 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.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]  
*Signature of Notary Public*

**OPTIONAL**

*Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**EXHIBIT A**  
**ESTIMATED COST OF WORK PURSUANT TO GRADING PLANS**

[see attached]



**ENGINEER'S OPINION OF PROBABLE COST FOR  
PHASE 3 PRIVATE ROUGH GRADING IMPROVEMENTS**

Prepared for:  
Meritage Homes of California, Inc.  
18655 North Claret Drive, Suite 400  
Scottsdale, AZ 85255

**Tract No. 37506-3**  
City Tracking No. RG22-0007

Project Location:  
Southeast Corner of Portola Avenue and Geral Ford Drive  
in the City of Palm Desert

October 18, 2024

**MSA JOB # 2497**



**MSA CONSULTING, INC.**

Civil Engineering • Land Surveying • Landscape Architecture  
Planning • Environmental Services • Dry Utility Coordination • CIS

34200 Bob Hope Drive Rancho Mirage, CA 92270 | 760.320.9811 | MSAConsultinginc.com

## ON SITE IMPROVEMENTS

DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
<b>Earthwork</b>				
Raw Cut	CY	34,602	\$5.00	\$173,010.00
Import	CY	124,038	\$5.00	\$620,190.00
<b>TOTAL OF EARTHWORK IMPROVEMENTS</b>				<b>\$793,200.00</b>

DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
<b>Demolition</b>				
Remove and Dispose of Existing Fence	LF	6,750	\$5.00	\$33,750.00
Remove Existing Wall and Footing	LF	56	\$5.00	\$280.00
<b>TOTAL OF DEMOLITION IMPROVEMENTS</b>				<b>\$34,030.00</b>

DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
<b>Rough Grading</b>				
Costruct Garden Wall (By Separate Permit) Structural Calculations and Design by Others	LF	3,452	\$60.00	\$207,120.00
Construct Combination Garden/Retaining Wall (By Separate Permit) Structural Calculations and Design by Others	LF	1,310	\$100.00	\$131,000.00
Install 24" ADS-N12 HDPE (Or Approved Equal) WT Bend	LF	84	\$120.00	\$10,080.00
Install 24" x 22 1/2° ADS-N12 HDPE (Or Approved Equal) WT Bend	EA	1		\$0.00
Construct Retaining Wall (By Separate Permit) Structural Calculations and Design by Ohters	LF	2,214		\$0.00
Construct Earthen Swale Per Detail on Sheet No. 3	LF	3,785	\$5.00	\$18,925.00

Construct Modified Headwall and Energy Dissipator at Storm Drain Outfall Per County of Riverside Std. No. 314 and Detail on Sheet 3	EA	1	\$30,000.00	\$30,000.00
<b>TOTAL OF ROUGH GRADING IMPROVEMENTS</b>				<b>\$397,125.00</b>

**Assumptions:**

1. These quantities are based on the approved Rough Grading Plan, delta 5, dated 8/22/2024.

**SUMMARY**

DESCRIPTION		TOTAL COST
<b>On Site Improvements</b>		
Earthwork		\$793,200.00
Demolition		\$34,030.00
Rough Grading Improvements		\$397,125.00
<b>SUBTOTAL OF ALL IMPROVEMENTS</b>		<b>\$1,224,355.00</b>
<b>20% CONTINGENCY</b>		<b>\$244,871.00</b>
<b>TOTAL</b>		<b>\$1,469,226.00</b>

- 1 The above opinion does not include raw land, legal fees, agency permits, professional engineering fees, construction phasing, bonds, financing/carrying costs, construction staking, soils testing, accounting or construction management.
- 2 MSA Consulting Inc. makes no representation concerning the estimated quantities and cost figures other than that all such figures are opinions only and the Engineer shall not be responsible for any fluctuations in cost factors or the actual quantities shown.

**ENGINEER'S OPINION OF PROBABLE COST FOR  
PHASE 3 PUBLIC ROUGH GRADING IMPROVEMENTS**

Prepared for:  
Meritage Homes of California, Inc.  
18655 North Claret Drive, Suite 400  
Scottsdale, AZ 85255

**Tract No. 37506-3**  
City Tracking No. RG22-0007

Project Location:  
Southeast Corner of Portola Avenue and GERALD Drive  
in the City of Palm Desert

October 18, 2024

**MSA JOB # 2497**



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**ON SITE IMPROVEMENTS**

DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
<b>Earthwork</b>				
Raw Cut	CY	14,829	\$5.00	\$74,145.00
Import	CY	53,159	\$5.00	\$265,795.00
<b>TOTAL OF EARTHWORK IMPROVEMENTS</b>				<b>\$339,940.00</b>

**Assumptions:**

1. These quantities are based on the approved Rough Grading Plan, delta 5, dated 08/22/2024.

**SUMMARY**

DESCRIPTION				TOTAL COST
<b>On Site Improvements</b>				
Earthwork				\$339,940.00
<b>SUBTOTAL OF ALL IMPROVEMENTS</b>				<b>\$339,940.00</b>
<b>15% CONTINGENCY</b>				<b>\$50,991.00</b>
<b>TOTAL</b>				<b>\$390,931.00</b>

- 1 The above opinion does not include raw land, legal fees, agency permits, professional engineering fees, construction phasing, bonds, financing/carrying costs, construction staking, soils testing, accounting or construction management.
- 2 MSA Consulting Inc. makes no representation concerning the estimated quantities and cost figures other than that all such figures are opinions only and the Engineer shall not be responsible for any fluctuations in cost factors or the actual quantities shown.

**EXHIBIT B  
LEGAL DESCRIPTION**