

**AGREEMENT
PUBLIC IMPROVEMENTS
11213 Palm Dr
Shodhan Dentistry**

**Resolution No. PC 05-11
Conditional Use Permit No. 01-11
Development Permit No. 01-11
Design Review No. 01-11**

This Agreement, made on SEPTEMBER 13, 2011, by and between the City of Desert Hot Springs, a municipal corporation of the State of California and the County of Riverside, hereinafter referred to as "City", and Harin Shodhan, with its principle office located in 11213 Palm Drive, Desert Hot Springs CA, 92240, hereinafter referred to as "Developer", hereby acknowledge the following:

WHEREAS, on April 26, 2011 the Planning Commission after a duly noticed public hearing adopted Resolution No PC 04-11 granting approval of Conditional Use Permit No. 01-11 and Development Permit No. 01-11 and Design Review 01-11 hereinafter referred to as "Development Permit; and

WHEREAS, Developer in order to secure approval of said Permit posted a performance security bond in the amount of **Eighty Thousand Five Hundred Seventy-Seven Dollars, and 05 Cents (\$80,577.05)** for the completion of all improvements which include on-site grading and street improvements; and

WHEREAS, this Agreement is executed pursuant to Section 16.08.050 Improvement agreement of the City of Desert Hot Springs Municipal Code.

NOW THEREFORE, for and in consideration of the approval of the Project, and in order to insure satisfactory performance by Developer of Developer's obligations under said Development Permit and said ordinances of the City of Desert Hot Springs, the parties, for themselves, their successors and assigns, hereby agree as follows:

Section 1. Incorporation by Reference.

The original development application and present development application, all maps on file, construction plans, detail maps and state laws, present City ordinances, and the other City rules, regulations and official acts with respect to this Development Permit and all the terms and conditions of the Development Permit are incorporated herein by reference as if set forth at length, except as expressly modified herein.

Section 2. Installation/Replacement of Improvements.

(a) Developer shall construct as provided for in the original Development Permit, all roads, curbing, pavement and other improvements, including all catch basins and drainage facilities,

monuments, street lights, and other improvements of any nature whatsoever as set forth on the improvement plans dated *June 23, 2011*, approved by the City Engineer, and accompanying construction plans prepared by the City Engineer.

(b) Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the plans or in place which have been destroyed or damaged, and Developer shall replace or have replaced, repair, or have repaired, as the case may be, or pay to the owner the entire cost of replacement or repairs, of, any and all property damaged or destroyed by reason of any work done hereunder, whether such property be 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 by any public or private corporation, or by any person whomsoever, or by any combinations of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Section .3. Modification of Approved Plans.

Developer agrees that if during the course of construction and installation of improvements it shall be determined by the City Engineer that revision of the approved plans is necessary in the public interest, it will undertake such design and construction changes as may be reasonable and are indicated by the City Engineer and approved by City. Said changes, if any, shall be confined to the premises owned by Developer.

Section 4. Security.

(a) Pursuant to Section 16.08.050 Improvement agreement of the City of Desert Hot Springs Municipal Code, Developer shall, concurrently with the execution hereof, furnish a surety bond or deposit in an amount equal to **Eighty Thousand Five Hundred Seventy-Seven Dollars, and 05 Cents (\$80,577.05)** for the cost of improvements as approved by the City Engineer as security for the faithful performance of this Agreement.

(b) Concurrently with the execution hereof, Developer shall furnish a surety bond or deposit in an amount equal to at least fifty percent (50%) of the estimated cost of improvements as approved by the City Engineer as security of the payment of all persons performing labor and furnishing materials in connection with this Agreement.

(c) The surety on each bond and the form thereof shall be satisfactory to the City Attorney.

(d) Developer agrees to furnish any bond required for the opening of any state or county roads or easements outside the jurisdiction of City.

Section 5. Timing of Performance.

(a) City hereby fixes the time for the commencement of said work to be on the day of _____, 2011. At least fifteen (15) calendar days prior to the commencement of work hereunder, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement thereof, so that the City Engineer shall be able to provide services of inspection.

- (b) It is agreed that the work to be performed shall be completed (1 year) from the date of this agreement.

Section 6. Time of Essence.

(a) In the event good cause is shown, the City Engineer may extend the time for completion of the improvements. The City Engineer shall be the sole and final judge as to whether or not cause has been shown to entitle Developer to an extension.

(b) Any such extension may be granted without notice to the Developer's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of the Agreement.

Section 7. Work Performance.

(a) Developer will do and perform, or cause to be done and performed, at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of the City Engineer, all own the work and improvements, within or without the project, necessary to complete the improvements in accordance with the plans and specifications on file as hereinbefore specified, or with any changes required or ordered by the City Engineer, which in his/her opinion are necessary or required to complete the work.

(b) All work shall be conducted and completed in accordance with present state codes and local laws, ordinances and regulations, and all maps, plans and specifications on file with City. Where any such construction has been partially completed prior to this Agreement, developer agrees to complete them in accordance with this paragraph.

(c) Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

Section 8. City Held Harmless From Liability.

(a) Developer hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for claims for damages arising from personal injury, including death, as well as from claims for property damage which may arise from Developer's or Developer's contractors', subcontractors', agents', or employees' activities or operations conducted pursuant to this Agreement.

(b) Developer agrees to, and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforementioned activities or operations conducted pursuant to this Agreement.

(c) City shall be held harmless by Developer for all claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the activities or operations arising from this Agreement, regardless of whether or not City has prepared, supplied or approved of, plans and/or

specifications for the Development Permit, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(d) Acceptance by City of said improvements, the deposit of certain monies made pursuant to this Agreement by Developer, or the existence of any of the insurance policies described in this Agreement do not and shall not waive any rights City may otherwise have against Developer.

Section 9. Liability Insurance Required.

(a) Developer shall take out and maintain during the life of this Agreement comprehensive general liability insurance as shall insure City, its elective and appointive boards, commissions, officers, agents, and employees, Developers and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from Developer's or any contractor's or subcontractor's operations hereunder, whether such operations be by Developer or any contractor or subcontractor, or by anyone directly or indirectly employed by either Developer or any contractor or subcontractor.

(b) Developer agrees to carry a comprehensive general liability policy with limits of \$1,000,000.00 for bodily injury and \$1,000,000.00 for property damage. Said policy shall include coverage for manufacturers and contractors, independent contractors, products and completed operations and personal injury. Developer also agrees to name City as an additional named insured.

(c) A certificate of insurance, as described in Section 11, covering the above items shall be filed with the City Clerk. Such insurance shall have been approved by the City Attorney as to form and carrier.

Section 10. Workmen's Compensation Insurance.

(a) Developer shall maintain, during the life of this Agreement, Workmen's Compensation Insurance for all Developer's employees employed at the work site(s), and in case any work is sublet, Developer shall require any contractor or subcontractor similarly to provide Workmen's Compensation Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer.

(b) In case any class of employees engaged in work under this Agreement at the work site(s) is not protected under any Workmen's Compensation law, Developer shall provide and shall cause each contractor or subcontractor to provide, adequate insurance for the protection of employees not otherwise protected.

(c) Developer hereby indemnifies City for any damage resulting to it from failure of either Developer or any contractor or subcontractor to take out or maintain such Insurance.

Section 11. Certificate of Insurance.

(a) Developer shall furnish City concurrently with the execution hereof, with satisfactory

evidence of insurance required and evidence that each carrier is required to give City at least thirty (30) days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement.

(b) Developer shall not commence work under this Agreement until Developer shall have obtained all insurance required pursuant to this Section, and such insurance has been approved by City.

(c) Developer shall not allow any contractor or subcontractor to commence work on his/her contract or subcontract until all similar insurance required of the contractor or subcontractor has been obtained and approved by City.

Section 12. Necessary Permits and Requisite Fees

(a) Prior to proceeding with the work, Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices, and pay all fees and taxes required by law.

(b) Developer agrees to procure, at its expense, any necessary permits required for the opening of any state or county roads or easements outside the jurisdiction of City.

Section 13. Utility Deposits Statement.

Developer shall file with the City Clerk, prior to the commencement of any work to be performed within the area delineated on the project maps, a written statement signed by Developer, and each public utility corporation involved, to the effect that Developer has made all deposits legally required by such public utility corporation for the connection of any and all public utilities to be supplied by such public utility corporation within the subdivision.

Section 14. On-Site Supervision.

(a) Developer shall provide an on-site supervisor, satisfactory to the City Engineer, on the work site(s) at all times during the construction of said improvements, with the authority to act for Developer. .

(b) Developer shall maintain improvements until acceptance by City. Prior to acceptance, City shall not be responsible for road or other improvements, maintenance or care until the same shall be accepted, nor shall City exercise any control over the improvements.

(c) In the event of default of these obligations by Developer, City without notice to the developer, may do the same at Developer's expense.

Section 15. City Inspections.

Developer shall at all times maintain proper facilities, and provide safe access for inspection by the City, to all parts of the work site(s) including any workshops or plants where work related to the subdivision project is being conducted.

Section 16. Acceptance of Improvements by City.

- (a) Upon the proper completion of these improvements and their approval by the City Engineer, and if these improvements then comply with all present state laws, present City ordinances and other City rules, regulations and requirements, City will then accept the improvements.
- (b) Title to, and ownership of, all improvements constructed hereunder by Developer or City shall vest absolutely in City, upon completion and acceptance of such improvements by City.

Section 17. Defective Construction.

- (a) If within one year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Developer shall, without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure.
- (b) If Developer fails to act promptly or in accordance with the requirements set forth in this Section, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Developer shall pay to City the actual cost of such repairs plus fifteen percent (15%).

Section 18. Notice.

- (a) All notices shall be sent to the City at:

City of Desert Hot Springs
Engineering Department
65-950 Pierson Blvd.
Desert Hot Springs, CA 92240

- (b) All notices shall be sent to the Developer at:

Harin Shodhan
11213 Palm Drive
Desert Hot Springs CA 92240

- (c) All notices herein required shall be in writing and delivered in person or sent by registered mail, postage prepaid.
- (d) If one party provides written notice to the other party of a change of address, all further notices shall be addressed and transmitted to the new address.

Section 19. Noncompliance.

If City determines that there is a violation of present state laws, City ordinances, other City rules,

regulations and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order.

Section 20. Notice of Breach and/or Default.

If Developer refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if Developer should be adjudged a bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer, or any of Developer's contractors, subcontractors, agents, or employees should violate any of the provisions of this Agreement, the City Engineer or City may serve written notice upon Developer and Developer's surety of breach of this Agreement, or of any portion thereof, and default of Developer.

Section 21. Performance by Surety or City.

(a) In the event of a breach and/or default, Developer's surety shall have the duty to take over and complete the work and the improvements herein specified.

(b) If the surety within five (5) days after receiving notice of Developer's breach and/or default does not provide City written notice of its intention to take over the performance of the contract and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any excess cost or damages occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the work site(s) and necessary therefor.

Section 22. Successors in Interest.

This Agreement shall run with the land, as shall also the covenants herein contained, and shall be to the benefit of City and its successor and assigns.

Section 23. 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 attorney's fees.

(THIS AREA LEFT INTENTIONALLY BLANK)

IN 'WITNESS 'WHEREAS, the undersigned have affixed their signatures at Desert Hot Springs, California the day and year first above written.

by Harin Shadham
Name of Company

by _____
Name of Company

By [Signature]
Authorized Signature

By _____
Authorized Signature

CITY OF DESERT HOT SPRINGS, a Municipal Corporation

Approved as to Form:

[Signature]
RUBEN DURAN,
City Attorney
City of Desert Hot Springs, CA

[Signature]
RICK DANIELS,
City Manager
City of Desert Hot Springs, CA

ATTEST:

JERRYL SORIANO,

[Signature]
~~Interim~~-Deputy City Clerk
City of Desert Hot Springs, CA