

**REPAYMENT AGREEMENT BY AND BETWEEN THE
CITY OF DESERT HOT SPRINGS, ON THE ONE HAND,
AND S.C. SHAH MANAGEMENT COMPANY, THE SHAH
FAMILY TRUST DATED JULY 31, 2000, AND
MORNINGSTARPLAZA, LLC, ON THE OTHER HAND**

This Repayment Agreement ("Agreement") is entered into as of June 5, 2018 ("Effective Date"), by and between, on the one hand, the City of Desert Hot Springs ("City"), and on the other hand, S.C. Shah Management Company (the "Management Company"), the Shah Family Trust Dated July 31, 2000, by and through their respective legal representatives ("Family Trust"), and Morningstarplaza, LLC ("Property Owner") (collectively, "Developer"). City and Developer are sometimes collectively referred to herein as "Parties," and alternatively referenced singularly as "Party" with respect to the following:

RECITALS

WHEREAS, in 2005, the City approved Development Permit No. 03-05 and Design Review No. 02-05 for a project to be located at the southwest corner of Mission Lakes Boulevard and Little Morongo Road, having APN 664-090-019, within the city of Desert Hot Springs ("Project"); and

WHEREAS, the address of the Project is 64949 Mission Lakes Blvd., Desert Hot Springs, California 92240; and

WHEREAS, in connection with the Project, the City required that development impact fees ("DIF") of \$259,512.39 be paid to the City, which were not paid; and

WHEREAS, on July 2, 2010, the Project and underlying real property ("Property") were acquired by the Family Trust, the name of the Project was changed to the Mission Lakes Market Place, and the Family Trust became responsible for payment of the DIF for the Project; and

WHEREAS, on October 15, 2014, the City, the Management Company, the Family Trust, and Suresh C. Shah, individually ("Shah"), entered into that certain Settlement Agreement By and Between the City of Desert Hot Springs and Suresh C. Shah, S.C. Shah Management Company and Shah Family Trust ("2014 Agreement") (it is deemed for all purposes under this Agreement that any references in the 2014 Agreement to "Shaw" shall be "Shah"); and

WHEREAS, through the 2014 Agreement, the City reduced the amount of DIF owed to the City in connection with the Project to \$241,660.39, (1) in recognition of certain improvements made by the Family Trust related to the Project and (2) in exchange for the promise of Shah, the Management Company, and the Family Trust that they would assume responsibility for the annual maintenance of landscaping, drainage basin, and street lights appurtenant to the Project; and

WHEREAS, the 2014 Agreement required that the DIF be paid in three equal annual installments of \$80,533.46 each; and

WHEREAS, the first annual installment due under the 2014 Agreement of \$80,533.46 was credited to the Management Company, the Family Trust, and Shah based on a prior August 26, 2014 payment made to the City to be applied against the outstanding DIF; and

WHEREAS, the second and third annual installments due under the 2014 Agreement were never paid; and

WHEREAS, the total remaining amount of DIF now due for the Project is \$161,126.93 ("DIF Balance"); and

WHEREAS, on December 4, 2015, the Family Trust transferred ownership of the Property to Property Owner, a limited liability company of which the Family Trust is a sole member, through a Grant Deed ("Grant Deed") recorded December 11, 2015 in the Riverside County Recorder's Office, as Instrument Number 2015-0538852; and

WHEREAS, the Grant Deed contains ministerial errors in that it erroneously reflects a date of July 30, 2000 for the date of the Family Trust instead of a date of July 31, 2000 and it erroneously indicated that the name of the Property Owner is "Morningstar Plaza, LLC," instead of its actual name, "MorningstarPlaza, LLC," and

WHEREAS, on June 29, 2017, the Family Trust caused a civil complaint to be filed, entitled Suresh C. Shah, as Trustee of the Shah Family Trust Dated July 31, 2000 v. City of Desert Hot Springs, *et al.*, Riverside County Superior Court case number PSC1703427 ("Litigation"); and

WHEREAS, the issues raised in the Litigation included the validity and enforceability of the 2014 Agreement, and additionally, the amount of DIF due from the Family Trust in connection with the Project; and

WHEREAS, pursuant to a Settlement Agreement entered into on December 5, 2017, the Litigation was dismissed with prejudice, and dismissal was entered with prejudice on December 12, 2017; and

WHEREAS, on December 22, 2017, Shah passed away; and

WHEREAS, the DIF Balance remains unpaid; and

WHEREAS, on January 31, 2018, the City sent a letter to Developer's attorney, Micah L. Bailey, notifying Developer that the DIF Balance remains unpaid, and additionally, that Shah, the Management Company, and the Family Trust are in default of the 2014 Agreement; and

WHEREAS, in order to avoid the uncertainty and expense of litigation, the Parties believe that it is in their best interest to resolve the dispute between them regarding default of the 2014 Agreement by Shah, the Management Company and the Family Trust and the unpaid DIF Balance; and

WHEREAS, the Parties intend that this Agreement shall be separate and distinct from the 2014 Agreement, and shall not affect, amend, or supersede the 2014 Agreement in any way, and additionally, that the 2014 Agreement shall remain in full force and effect; and

WHEREAS, the Management Company and the Family Trust agree to extend the limitations period for the City to bring an action arising out of default or breach of the 2014 Agreement in accordance with the express terms contained herein; and

WHEREAS, Developer agrees to make monthly installments to the City in the amount of Three Thousand Five Hundred Dollars (\$3,500) per month until the full amount of the DIF Balance has been paid ("Repayment Plan"); and

WHEREAS, Developer represents and warrants that Developer, and each of them individually, are solvent in that each has sufficient assets or income to pay all of its debts and obligations and to make the monthly installments to the City pursuant to the Repayment Plan for the duration of this Agreement; and

WHEREAS, the Property Owner and the City agree that a non-exclusive remedy available to the City for breach of this Agreement by Developer shall be the right of the

City to record a real property lien against the Property in substantial conformance with Exhibit A, attached hereto and incorporated herein by this reference, with the Office of the Recorder of Riverside County, California, for the amount of \$161,126.93, less any monthly payments made by Developer to the City in accordance with the Repayment Plan as of the date of the breach; and

WHEREAS, in exchange for the Repayment Plan and the right to record a real property lien against the Property, the City agrees not to pursue any remedies it may possess arising out of default or breach of the 2014 Agreement and the unpaid DIF Balance, provided that Developer does not breach this Agreement; and

WHEREAS, the Parties each acknowledge that this Agreement has been entered into knowingly, voluntarily, and intelligently, and after consultation with their respective counsel.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

SECTION 1. INCORPORATION OF RECITALS

The foregoing recitals are hereby expressly made a part of this Agreement.

SECTION 2. PRIOR AGREEMENT ENFORCEABLE

All terms and conditions of the 2014 Agreement remain binding and enforceable.

SECTION 3. EXTENSION OF LIMITATIONS PERIOD; WAIVER; COVENANT TO EXECUTE ADDITIONAL EXTENSION

a. Pursuant to California Code of Civil Procedure section 360.5, the Management Company, the Family Trust and the City agree that the limitations period for the City to bring any action based on default or breach of the 2014 Agreement shall be extended by four (4) additional years from the date of expiration of the time for commencement of any such action.

b. In the event the DIF Balance has not been paid in full to the City within four (4) years from the date of expiration of the time for commencement of any action arising out of default or breach of the 2014 Agreement, the Shah Estate, Management Company and Family Trust agree to execute a written instrument providing an additional extension of four (4) more years for the City to bring any action based on default or breach of the 2014 Agreement.

SECTION 4. COVENANT NOT TO PURSUE LEGAL REMEDIES

Provided Developer does not breach this Agreement, and except as otherwise provided in this Agreement, in consideration of Developer's covenants and promises set forth in this Agreement, the City, its heirs, executors, administrators, and assigns, agree and covenant not to file any claim, action, or pursue any remedy against Developer, its heirs, executors, administrators, or assigns arising out of default or breach of the 2014 Agreement or the unpaid DIF Balance.

SECTION 5. REPAYMENT PLAN

Developer, or its designated agent or representative, shall make monthly payments to the City in the amount of Three Thousand Five Hundred Dollars (\$3,500) per month, each and every month, until a total amount of \$161,126.93 has been paid to the City. Payments shall commence on the fifteenth (15th) calendar day of the calendar month immediately following the Effective Date of this Agreement. Payments shall be due on the fifteenth (15th) calendar day of each month.

SECTION 6. RIGHT TO RECORD REAL PROPERTY LIEN

a. In the event of breach of this Agreement by Developer, the Property Owner and the City agree that the City shall have the right to record a real property lien against the Property with the Office of the Recorder of Riverside County, California, in the amount of the lesser of the following:

- (1) \$161,126.93; or
- (2) the remaining balance of the DIF Balance, as reduced by any payments Developer makes to the City pursuant to the Repayment Plan, with the exact amount determined solely by the City in good faith.

b. The lien shall be in substantial conformance with Exhibit A. Except as otherwise required by law, the City shall only be obligated to release said lien after the DIF Balance has been paid in full to the City. The City's right to record said lien shall be a non-exclusive remedy and shall be cumulative with any and all other remedies the City may have in law or equity arising out of this Agreement or otherwise. In the event that the City records the lien against the Property and Developer later satisfies the entire amount due and owing pursuant to the lien, the City shall release the lien by recording a complete release with the Office of the Recorder of Riverside County, California, within thirty (30) calendar days after receiving said payment.

SECTION 7. TERM

The term of this Agreement shall begin as of the Effective Date and shall continue in full force and effect until the amount of \$161,126.93 has been paid in full to the City pursuant to this Agreement.

SECTION 8. MUTUAL RELEASE

Subject to and conditioned upon Developer's complete performance of all terms and conditions contained herein, the Parties, for themselves and each of their respective predecessors, successors, assigns, heirs, administrators, executors, conservators, agents, attorneys, settlors, beneficiaries, and trustees, past and present, fully and forever release, waive and discharge all Parties and each of their officers, directors, shareholders, employees, predecessors, successors, assigns, heirs, administrators, executors, conservators, agents, attorneys, past and present, from any and all claims, demands, liabilities, liens, actions, or causes of action, of any kind or nature whatsoever, in law, in equity or otherwise, whether now known or unknown, vested or contingent, suspected or unsuspected, which they may now have or ever had since the beginning of time until the Effective Date arising out of default or breach of the 2014 Agreement and the unpaid DIF Balance.

SECTION 9. WAIVER OF UNKNOWN CLAIMS

The Parties acknowledge that there is a possibility that subsequent to the execution of the Agreement, the Parties will discover facts or incur or suffer claims that were unknown or unsuspected at the time the Agreement was executed, and which if known by Parties at that time may have materially affected the Parties' decision to execute the Agreement. The Parties acknowledge and agree that by reason of the

Agreement, and the releases outlined above, the Parties are assuming any risk of such unknown facts and such unknown and unsuspected claims.

The Parties have been advised of the existence of Civ.C. §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding such provisions, and subject to and conditioned upon the Parties' performance of all terms and conditions contained herein, the Agreement shall constitute a full release in accordance with its terms. The Parties hereby knowingly and voluntarily waive the provisions of Civ.C. §1542, as well as any other statute, law or rule of similar effect.

SECTION 10. ENTIRE AGREEMENT; MODIFICATIONS.

This Agreement supersedes any and all other agreements, either oral or written, between the Parties with respect to express terms of this Agreement. This Agreement contains all of the covenants and agreements between the Parties with respect to the express terms of this Agreement, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party except those covenants and agreements embodied in this Agreement regarding express terms of this Agreement. No agreement, statement, or promise not contained in this Agreement regarding express terms of this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written instrument signed by both Parties.

SECTION 11. BINDING; SUCCESSORS IN INTEREST

This Agreement is, and shall be, enforceable, binding, and admissible in a court of law. To the maximum extent allowed by law and except as otherwise specified herein, this Agreement inures to the benefit of and is binding upon the Parties and all their respective predecessors, assigns, beneficiaries, employees, affiliated entities, shareholders, officers and directors, partners, joint venturers, dependents, spouses, respective representatives, agents, accountants, attorneys, insurance carriers, and successors.

SECTION 12. APPLICABLE LAW; VENUE

This Agreement shall be deemed to have been executed and delivered within the State of California. The rights and obligations of the Parties hereunder shall be interpreted, governed, construed and enforced in accordance with the laws of the State of California in all respects. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

SECTION 13. INTERPRETATION OF THIS AGREEMENT

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties, and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either Party. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

SECTION 14. NO THIRD PARTY BENEFICIARIES

It is expressly agreed that this Agreement is not for the benefit of any person or entity not a Party hereto. This Agreement is not intended to constitute a third party beneficiary contract.

SECTION 15. SEVERABILITY

If any portion, provision, or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement, and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

SECTION 16. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

SECTION 17. INDEPENDENT INVESTIGATION

Each Party to this Agreement has made an independent investigation of the facts pertaining to the provisions contained in this Agreement and all of the matters pertaining thereto as deemed necessary.

SECTION 18. HEADINGS AND FORMATTING

The headings and formatting in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

SECTION 19. TIME IS OF THE ESSENCE

Time is of the essence with respect to any act or performance under this Agreement.

SECTION 20. DEFAULT AND BREACH

a. Default and Breach. Unless otherwise provided in this Agreement, failure or delay by either Party to perform any material term or provision of this Agreement shall constitute a “default” under this Agreement. Upon receipt of written notice specifying the alleged default, the defaulting Party shall have ten (10) business days to cure, correct, or remedy the alleged default. The defaulting Party shall diligently complete such cure, correction or remedy. In the event that a default remains uncured for more than ten (10) business days following receipt of written notice specifying the default, a “breach” shall be deemed to have occurred. Additionally, any breach of any Party’s representation or warranty given hereunder shall be deemed a material breach of this Agreement.

b. Notice of Default. Unless otherwise provided in this Agreement, in the event of an alleged default by either Party, the non-defaulting Party shall give written notice of default to the defaulting Party in accordance with the notice provisions specified in this Agreement. Said notice shall specify the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the non-defaulting Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

c. Not a Waiver. Any failure or delay by a non-defaulting Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a non-defaulting Party of one or more rights or remedies shall not preclude the exercise by that Party, at the same or different times, of any other rights or remedies for the same default or any other

default.

SECTION 21. WAIVER

A waiver of any provision of this Agreement by any of the Parties shall not be deemed a waiver of such provision either before or thereafter and shall not be deemed a waiver of any other provision of this Agreement.

SECTION 22. NOTICE

Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service, by deposit in the United States mail certified or registered with return receipt requested and with postage prepaid, AND by email transmission, to the Parties as follows:

To S.C. Shah Management
Company, Inc.

Vishakha Shah, President
40-530 Morningstar Road
Rancho Mirage, CA 92270
vicky2355@aol.com

To the Shah Family Trust
Dated July 31, 2000

Vishakha Shah, Trustee
40-530 Morningstar Road
Rancho Mirage, CA 92270
vicky2355@aol.com

To Morningstarplaza, LLC

Vishakha Shah, CEO
40-530 Morningstar Road
Rancho Mirage, CA 92270
vicky2355@aol.com

To City:
Manager

Charles L. Maynard, City

11-999 Palm Drive
Desert Hot Springs
California, 92240
cmaynard@cityofdhs.org

Copy to:

Jerryl Soriano, City Clerk
11-999 Palm Drive

Desert Hot Springs
California, 92240
jsoriano@cityofdhs.org

Copy to:

Jennifer Mizrahi, City Attorney
Quintanilla & Associates
P.O. Box 176
Rancho Mirage
California, 92270
jenniferm@qalawyers.com

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

SECTION 23. ATTORNEY'S FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to, or as a result of any alleged breach of any provision of, this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

SECTION 24. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

SECTION 25. VOLUNTARY

Each Party acknowledges that the terms contained herein are made and agreed to by each Party voluntarily and with full knowledge of its significance.

SECTION 26. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City of any obligation of the terms of this Agreement.

SECTION 27. RIGHTS AND REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

SECTION 28. JOINT AND SEVERAL LIABILITY

Each party that comprises the Developer shall be jointly and severally liable for all obligations of Developer under this Agreement (except when this Agreement otherwise expressly provides that the Agreement provision, condition, term or obligation applies to less than all of the parties that comprise Developer), and each, jointly and severally, hereby absolutely and unconditionally guarantees to the City the prompt payment of, the installment payments under the Repayment Plan which are required to be paid to the City hereunder. Each party that comprises the Developer agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment, that such obligations shall not be discharged until full payment of the DIF Balance is made by Developer, and that such obligations are absolute and unconditional.

SECTION 29. REPRESENTATIONS AND WARRANTIES

Developer represents and warrants that, as of the Effective Date: (1) Developer believes the fair market value of the Property exceeds the amount of the DIF Balance as of the Effective Date; (2) Developer expects that the fair market value of the Property will continue to exceed the DIF Balance until the DIF Balance is fully paid off; and (3) Developer, and each of them individually, are solvent in that each has sufficient assets or income to pay all of its debts and obligations and to make the monthly installments to the City pursuant to the Repayment Plan for the duration of this Agreement. Additionally, in spite of the Grant Deed containing the ministerial errors detailed above, the Family Trust represents and warrants that the Property Owner owns the Property in fee simple and the Family Trust will not contest such ownership.

SECTION 30. NO ADDITIONAL LIENS ON PROPERTY

Developer agrees that it shall not encumber nor allow to be encumbered, the Property, with any new liens subsequent to the Effective Date, without first obtaining the City's written consent.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

CITY OF DESERT HOT SPRINGS

Charles Maynard, City Manager

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

**AUTHORIZED AGENT OF THE S.C. SHAH
MANAGEMENT COMPANY**

Signed: _____

Print: _____

Title: _____

**AUTHORIZED AGENT OF THE SHAH
FAMILY TRUST DATED JULY 31, 2000**

Signed: _____

Print: _____

Title: _____

**AUTHORIZED AGENT OF
MORNINGSTARPLAZA, LLC**

Signed: _____

Print: _____

Title: _____

APPROVED AS TO FORM:

Micah L. Bailey, Counsel for
S.C. Shah Management Company, Inc., the
Shah Family Trust Dated July 31, 2000, and
MorningstarPlaza, LLC

EXHIBIT "A"

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Desert Hot Springs
Attn: Jerryl Soriano, City Clerk
11-999 Palm Drive
Desert Hot Springs
California, 92240

APN(s): 664-090-019

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

(Exempt from recording fees pursuant to Government Code Sections 6103 and 27383)

NOTICE OF LIEN AGAINST REAL PROPERTY

Notice is hereby given that pursuant to the Repayment Agreement, dated June 5, 2018, by and Between the City of Desert Hot Springs, on the one hand, and S.C. Shah Management Company, Inc., the Shah Family Trust Dated July 31, 2000, by and through their respective legal representatives, and Morningstarplaza, LLC, on the other hand ("Repayment Agreement"), a true and correct copy of which is attached hereto and incorporated herein by this reference as Exhibit "1," and Civil Code Section 2881, the City of Desert Hot Springs hereby claims a lien upon the real property hereinafter described ("Subject Property"), including every interest in such property held by any party owning or holding any interest therein, in the amount of \$_____

Location of Subject Property:

64949 Mission Lakes Blvd., in the City of Desert Hot Springs, County of Riverside, State of California.

Assessor's Parcel Number(s):

APN: 664-090-019

Legal Descriptions of Subject Property:

Lot 4, of Tract 31540 as shown by map on file in Book 365, Pages 69 to 71 inclusive of Maps recorded on in the office of the County Recorder of Riverside County, California.

Name of Claimant:

City of Desert Hot Springs

Date: _____, 2018

Charles Maynard, City Manager

ATTESTED:

Jerryl Soriano, City Clerk

EXHIBIT “1”

[See attached Repayment Agreement Dated _____, 2018]