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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS
JEFF HATCH-MILLER - CHAIRMAN
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MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

2006 APR -5 1 P 4: 08

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.,
AND COX ARIZONA TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

NOTICE OF FILING

Cox Arizona Telcom, LLC, through undersigned counsel, hereby files the Direct
Testimony of Ivan Johnson, Tisha Christle and Linda Trickey in the above-caption docket.

RESPECTFULLY SUBMITTED this 5th day of April 2006.

COX ARIZONA TELCOM, LLC.

By

Michael W. Patten
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Attorneys for Cox Arizona Telcom, LLC

Original and 13 copies of the foregoing
filed this 5th day of April 2006 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Copy of the foregoing hand-delivered/
2 mailed this 5th day of April 2006 to:

3 Chairman Jeff Hatch-Miller
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Commissioner Marc Spitzer
8 Arizona Corporation Commission
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Commissioner William A. Mundell
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Commissioner Mike Gleason
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Commissioner Kristin K. Mayes
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Dwight Nodes, Esq.
24 Administrative Law Judge
25 Hearing Division
26 Arizona Corporation Commission
27 1200 West Washington Street
Phoenix, Arizona 85007

Maureen A. Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Esq.
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

ROSHKA HEYMAN & DeWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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Martin A. Aronson
William A. Cleaveland
Morrill & Aronson. P.L.C.
One East Camelback Road, Suite 340
Phoenix, Arizona 85012

Michael M. Grant, Esq
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016

By Mary Appolito

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) DOCKET NO. T-03471A-05-0064
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DIRECT TESTIMONY

OF

IVAN JOHNSON

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

April 5, 2006

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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1 **I. INTRODUCTION**

2 **Q. What is your name and business address?**

3 A. Ivan Johnson.

4
5 **Q. By whom are you employed?**

6 A. I am employed by Cox Communications Arizona.

7
8 **Q. Mr. Johnson, on whose behalf are you testifying in this proceeding?**

9 A. Cox Arizona Telcom, LLC

10

11 **Q. Please provide your background and experience.**

12 A. As a fifth-generation native of Arizona, I joined Cox Communications in 1980 as Vice
13 President of Franchising. During my tenure with Cox Communications, I have served as
14 Vice President of Community Relations, State Systems Manager, Regional Operations
15 Manager for the East Valley, and Manager of Business Development. In 1987, I was
16 promoted to Vice President of Public Affairs and Business Development. Since 1995 I
17 have been the Vice President of Community Relations and Televideo at Cox
18 Communications.

19

20 Prior to Cox Communications, I worked at the National Cable Television Association as
21 Vice President of Association Affairs. I also served at the Arizona Cable Television
22 Association as Executive Director and at the Arizona Legislature as Administrative
23 Assistant for the Arizona Senate Majority Leader, Sandra Day O'Connor.

24

25 **Q. What are your responsibilities in your current position with Cox?**

26 A. My title is Vice President of Community Relations and TeleVideo for Cox
27 Communications Arizona. In that role, I am responsible for all Government, Media and

1 Community Relations, as well as our production of programming on Cox 7, Cox's
2 statewide local programming channel. My Government Relations responsibilities include
3 working with 36 local municipal governments and all areas of state government, including
4 the Arizona Legislature, the Governors Office, the ACC and all members of the Arizona
5 Congressional delegation.

6
7 In connection with this docket, I participated in the settlement negotiations with Accipiter,
8 Staff and the Vistancia developers.

9
10 **II. PURPOSE OF DIRECT TESTIMONY**

11
12 **Q. Mr. Johnson, what is the purpose of your Direct Testimony?**

13 A. The purpose of my direct testimony is several-fold. First, I describe and explain the terms
14 of the settlement agreement dated November 3, 2005, entered into by Accipiter
15 Communications, Inc., CoxCom, Inc., Cox Arizona Telcom, LLC, Vistancia LLC and
16 Vistancia Communications, LLC (the "Settlement Agreement"). I also explain why the
17 terms of the Settlement Agreement are in the public interest and how the terms address
18 concerns that have been raised about the private easement arrangement that had been
19 approved by the City of Peoria for the Vistancia development at the request of the
20 Vistancia developers.

21
22 Second, I discuss the concept of preferred marketing agreements and the benefits that those
23 agreements can provide to the public.

24
25 Third, I provide some context regarding the private property access issues that
26 telecommunications companies face in their efforts to provide service. In connection with
27 that discussion, I explain that Cox was unfamiliar with the private easement arrangement

1 that was proposed by the Vistancia developers, did not request or require the arrangement,
2 and has not experienced the arrangement in any development other than Vistancia. Cox
3 has never even suggested to any developer – even after the City of Peoria approved the
4 private easement for Vistancia – that a private easement arrangement should be used for a
5 development.

6
7 Finally, I discuss what Cox intends to do – and has historically done – to support access to
8 private property and to encourage telecommunications competition in the Arizona market.
9

10 **III. SUMMARY OF TESTIMONY**

11
12 **Q. Please provide a summary of your Direct Testimony.**

13 **A.** The Settlement Agreement in this docket fully responds to the concerns raised by Accipiter
14 and the Commission in regards to the MUE arrangement proposed and instituted in
15 Vistancia by the Vistancia developers. Among other things, it provides as follows:

- 16
17 1. The MUE previously granted by the City of Peoria to allow the Vistancia
18 developers to hold private easements and control access to easements in Vistancia
19 has been set aside, and, as a result, the private easements have been converted to
20 public utility easements at the Vistancia development. This will allow any
21 communications service provider access to the easements at no charge subject to
22 normal regulatory and local construction and tax requirements.
- 23
24 2. Cox has voluntarily agreed to provide, and is providing, some important
25 accommodations to Accipiter. First, to facilitate Accipiter's access at Vistancia,
26 Cox is providing conduit to Accipiter, both to the Vistancia development and
27 within the Vistancia development. Cox has also agreed to provide discounted
resale service to Accipiter in the portion of the Vistancia development where
trenches have been closed as of December 1, 2005. Additionally, Cox has made a
settlement payment of \$250,000 to Accipiter.
3. The Vistancia developers have also made important accommodations to Accipiter.
They have provided land to Accipiter for installation of underground vaults for
necessary facilities and have made a settlement payment of \$750,000 to Accipiter.
4. The Cox/Vistancia preferred provider marketing arrangements for the Vistancia
development have been cancelled. Vistancia and Cox will not require
homebuilders or commercial developers to market exclusively Cox's or any other
communication provider's services.

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5. Cox has expressly confirmed that it will not participate in a private easement arrangement anywhere in Arizona that is similar to the easement arrangement created by the Vistancia developer.

These provisions serve the three-fold purpose of: (i) making Accipiter effectively more than whole, (ii) increasing the potential for competition within the Vistancia community, and (iii) substantially disadvantaging Cox for agreeing to the MUE arrangement proposed by the Vistancia developers. As a result of the Settlement Agreement, Accipiter filed a Notice of Withdrawal with Prejudice in evidence of its full satisfaction with the settlement arrangement. Accipiter and other competitors may compete more fully in Vistancia than other planned communities because they no longer face a preferred marketing arrangement. Those arrangements, which permissibly exist in many other planned community developments following the Commission's approval of preferred marketing agreements, have become common practice in Arizona and, indeed, throughout the United States. Given both the public and private benefits of the Settlement Agreement, and Cox's voluntary assumption of extensive financial obligations under the Settlement Agreement, Cox submits that the Settlement Agreement is in the public interest, and the complaint in this docket should be dismissed without further action of the Commission.

The private easement arrangement imposed by the Vistancia developers – and approved by the City of Peoria – should be viewed within the larger picture of the exercise of property rights to affect access by telecommunications providers. In many cases, property owners have simply refused access to more than one provider. In other cases, property owners extract a payment for access by some providers while allowing access to other providers who do not have to pay. In light of this, it is not hard to understand that, when confronted by the Vistancia developers with what it was told was a new, legal way to structure private property rights and access, Cox accepted the arrangement. Cox acknowledges that it agreed to serve Vistancia under the developers' terms and did not undertake a legal

1 challenge to the private easement. But Cox had no legal obligation to undertake such a
2 challenge, particularly because there was a reasonable belief that the private easement –
3 which had been created by an act of the City of Peoria – was a valid property right owned
4 by the Vistancia developer that could be used by the Vistancia developer as it wished.
5

6 If Cox had refused the MUE arrangement proposed by the Vistancia developers and
7 insisted on challenging the MUE arrangement, services may not have been timely available
8 to Vistancia residents. As a result of the events that transpired, the Vistancia community is
9 now receiving superior services, Accipiter and other competitors have access to Vistancia
10 without any constraints imposed by private easements or preferred marketing arrangements
11 that the Commission has previously accepted, Accipiter has been made whole, and Cox has
12 been substantially disadvantaged, particularly through the elimination of the preferred
13 marketing arrangement and the settlement payment. Moreover, the voluntary resolution
14 mechanism afforded through the Commission has served its purpose of bringing about an
15 appropriate resolution. If the Commission exercises authority to penalize Cox further, it
16 will bring about no further benefits to customers or competition, and will serve only to
17 discourage private resolution of complaint matters in the future.
18

19 **IV. THE SETTLEMENT AGREEMENT**

20
21 **Q. Mr. Johnson, would you briefly describe the settlement process?**

22 **A.** After the Commission Procedural Conference on June 9, 2005, and with the stated
23 encouragement of the Commission and Staff that the parties have an opportunity to resolve
24 the dispute, Accipiter, Cox, the Vistancia developers and Staff began settlement
25 discussions. Staff participated in the first few settlement meetings. At the beginning of
26 those discussions, Staff set forth its concerns about the private easement arrangement and
27 the situation at Vistancia. Staff also suggested several possible settlement terms that it

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 believed would address Staff's concerns. At one of the early meetings, Cox and the
2 Vistancia developers set forth a list of settlement concepts that addressed many of the ideas
3 Staff had expressed at previous meetings. After that meeting, the parties continued to
4 negotiate settlement while keeping Staff apprised of the progress of the negotiations.
5

6 After several weeks of negotiations, the parties reached a settlement and prepared a
7 memorandum of understanding ("MOU") dated September 1, 2005 setting forth the
8 parameters and key provisions of the settlement. That memorandum was provided to Staff
9 for review and feedback. The parties moved forward with preparing the formal settlement
10 agreement, including the extensive exhibits to the settlement agreement. On November 3,
11 2005, Accipiter Communications, Inc., CoxCom, Inc., Cox Arizona Telcom, LLC,
12 Vistancia LLC and Vistancia Communications, LLC signed the Settlement Agreement, a
13 copy of which is attached as Attachment IJ-1 (that copy includes the voluminous exhibits
14 to the Settlement Agreement). A copy of the Settlement Agreement was provided to Staff
15 on November 4, 2005.
16

17 **Q. Was the entire Settlement Agreement filed in the docket?**

18 **A.** Yes. The entire Settlement Agreement was filed in the docket on December 14, 2005,
19 which was the day after the City of Peoria formally voted to extinguish the private
20 easement. At that time, the payment term was redacted from the publicly-filed version
21 although Staff already had that information from the November 4, 2005 submission.
22 Subsequently, all parties agreed that the payment term could be filed publicly and the term
23 was filed in the docket on February 24, 2006.
24
25
26
27

1 **1. Conversion of Private Easement to Public Utility Easement**

2
3 **Q. Could you describe and explain the terms of the Settlement Agreement beginning**
4 **with Section III(1)?**

5 **A.** Certainly. Sections I and II are the Definitions and Recitals, respectively. Section III
6 contains the substantive provisions of the settlement. Section III(1) provides for the
7 conversion of the private easement at Vistancia (the "Multi-Use Easement" or "MUE") to
8 a standard public utility easement ("PUE"). To achieve this, certain termination
9 documents were drafted. Those documents are attached to the Settlement Agreement as
10 Exhibits 1A through 1D. The termination documents extinguished the Common Services
11 Easements and Restrictions, the Multi-Use Easement and Indemnity and the two Cox Non-
12 Exclusive License Agreements. A new Roadway and Utility Easement was created, and
13 the Vistancia CCRs were amended to eliminate reference to the MUEs. Those documents
14 are Exhibits 1E and 1F to the Settlement Agreement.

15
16 **Q. Was it necessary to have the Peoria City Council take action to extinguish the private**
17 **easement?**

18 **A.** Yes. The Peoria City Council voted to approve the conversion from a private easement to
19 the public utility easement on December 13, 2005. Cox was not involved in the
20 communications with the City of Peoria regarding the conversion of the private easement
21 to the public utility easement. During the interim between the execution of the Settlement
22 Agreement and the vote by the City Council, Vistancia formally granted Accipiter an
23 interim access agreement to the private easement at no charge, which is set forth in Section
24 III(1)(b) and Exhibit 2 to the Settlement Agreement. In fact, Vistancia had already been
25 allowing Accipiter free access to the private easement from at least the time the
26 Memorandum of Understanding had been executed.

27

- 1 **Q. Have the various termination documents been executed and recorded as necessary?**
- 2 A. Yes and copies of the first page of the recorded documents were filed in the docket in this
- 3 case on December 22, 2005.
- 4
- 5 **Q. Is Accipiter now able to install its facilities when the dry utilities trenches are open in**
- 6 **the Vistancia development?**
- 7 A. Yes. It is my understanding that since the signing of the MOU, the Vistancia developers
- 8 have been notifying Accipiter when the trenches are going to be opened and available for
- 9 installation of dry utilities such as telecommunications and electricity. To my knowledge,
- 10 Accipiter has been installing its facilities since that time. In fact, in one instance, Accipiter
- 11 installed its facilities in a trench that was then covered before Cox installed its facilities.
- 12 Cox had to go back and uncover the trench to put its facilities in that area.
- 13
- 14 **Q. Other than the conversion of the private easement to a public easement, does Section**
- 15 **III(1) provide anything further?**
- 16 A. Yes. In Section III(1)(c), both Cox and the Vistancia developers expressly agree that in the
- 17 future they will not participate in a communications services private easement access
- 18 arrangement in Arizona similar to the one used at Vistancia. As previously stated, Cox has
- 19 not provided service to any other development where such a private easement arrangement
- 20 was in place, either before or after Vistancia.
- 21
- 22 **Q. Do you believe that the conversion of the private easement to a public utility easement**
- 23 **addresses concerns raised by Accipiter, Staff and the Commission?**
- 24 A. Yes. My impression, based on public statements and Staff feedback, is that the private
- 25 easement – which had not previously been used by a developer in Arizona – caused the
- 26 single most concern among Staff and the Commission about potential chilling of
- 27 competition. This step in combination with other provisions of the Settlement Agreement

1 certainly places Accipiter in a position to compete in the Vistancia development.
2 Moreover, this provision also reaches out and affects the private property rights of the
3 developer which is something the Commission may not be able to achieve absent the
4 Settlement Agreement.

5
6 **2. Provision of Conduit and Land to Accipiter**

7
8 **Q. Could you explain Section III(2) of the Settlement Agreement, which provides**
9 **conduit and land to Accipiter in the Vistancia development?**

10 **A.** One of Accipiter's concerns was that some of the main streets had already been paved in
11 the Vistancia development and that it would be difficult and costly to install its own
12 conduit in those areas. Cox had installed duplicative conduit in most of the main rights of
13 way. As part of the Settlement Agreement, Cox is giving Accipiter a two inch (2") conduit
14 in almost all of the right of way that had been covered and paved. Moreover, Cox
15 provided conduit to Accipiter that runs from Highway 303 to the entrance of the Vistancia
16 development along Vistancia Boulevard. Exhibit 3 to the Settlement Agreement is a map
17 that shows the location of the conduit being provided by Cox to Accipiter at no charge.

18
19 Moreover, Cox is providing the labor to "stub out" the conduit at locations requested by
20 Accipiter to make the conduit accessible to Accipiter in accordance with Accipiter's
21 network design for Vistancia. Finally, upon completion of the stub out process, Cox will
22 provide a bill of sale to Accipiter transferring title of the conduit to Accipiter.

23
24 **Q. What is the land that is being provided to Accipiter?**

25 **A.** I understand that Accipiter needed two locations for controlled environmental vaults
26 ("CEVs") that would hold necessary electronics related to its network. The Vistancia
27 developers provided two parcels of property at the locations requested by Accipiter (the

1 CEV locations are indicated on Exhibit 3 to the Settlement Agreement) by special warranty
2 deed. The documentation related to the transfer of the land parcels is attached as Exhibits
3 5A-C to the Settlement Agreement. As shown on the conduit map, the conduit that Cox is
4 providing to Accipiter connects into those CEV locations.

5
6 **Q. Have the conduit and land parcels been transferred to Accipiter?**

7 A. The land parcels have been deeded over to Accipiter, and those documents have been
8 recorded. Cox has been working closely with Accipiter on the stub out process. Cox
9 believes it is meeting Accipiter's necessary schedule for stubbing out the conduit as
10 Accipiter determines where it needs the stub outs. The stub out process is not yet complete
11 but has progressed substantially. Cox certainly has the incentive to complete the process
12 given that the release provided for in Section III(6) of the Settlement Agreement is
13 effective only upon delivery of the bill of sale after the stub out process is completed.
14 However, the stub out process can only progress as fast as Accipiter identifies the
15 necessary stub out locations.

16
17 **Q. Do you believe that the provision of conduit and land addresses concerns raised by**
18 **Accipiter, Staff and the Commission?**

19 A. Yes. Accipiter was concerned that it would have to incur significant expense in having to
20 go back and install conduit in rights of way that were already paved over. By providing
21 the conduit to Accipiter, Cox has ameliorated that concern substantially. Cox estimated
22 that the cost savings to Accipiter as a result of the provision of the conduit was
23 approximately \$480,000. At the same time, Cox decreased its ability to expand its network
24 in portions of the Vistancia development where it had more limited conduit resources.

25
26 At the time of the settlement, Cox understood that only a low percentage of the residential
27 development of Vistancia – approximately 10% — had paved rights of way that would

1 increase conduit installation costs for Accipiter. Given that the Vistancia development is
2 anticipated to include up to 14,000 residential lots, Accipiter has unfettered access to more
3 than 12,000 lots. It also has improved access to the remaining lots as a result of the
4 provision of conduit by Cox. Moreover, there has been no commercial development in the
5 Vistancia development. Accipiter has full access to those opportunities, and the conduit
6 provides Accipiter access right to the doorstep of the parcels designated for commercial
7 development.

8
9 Thus, to the extent that there was a concern that competition was hindered by lack of
10 access, the concern has been addressed by the settlement with Accipiter. It should also be
11 noted that Accipiter was not authorized to serve a large portion of the Vistancia
12 development until February of 2005, and much of the paving that had occurred in that
13 portion was not the area where Accipiter already had a CC&N.

14
15 Finally, the provision of conduit and land provides Accipiter with practical relief that the
16 Commission could not require. The conduit and land directly enable Accipiter to compete
17 in Vistancia on a level playing field with Cox by providing access to 100% of the
18 potentially more profitable business customers in Vistancia and approximately 90% of
19 residential customers in the Vistancia development — even though Accipiter did not have
20 a CC&N to serve a large portion of Vistancia until well after the development commenced.
21 Moreover, the resale provision discussed below increases the access to residential
22 telephone customers to 100%. When you view that access in connection with the lack of
23 any Cox preferred marketing arrangements for the entire Vistancia development (which is
24 discussed in more detail below), Accipiter can compete effectively and without exclusive-
25 marketing hurdles that exist in many other planned community developments.
26
27

1 **3. Telephone Resale to Accipiter**

2
3 **Q. Turning to Section III(3) of the Settlement Agreement, please explain Cox's resale of**
4 **telephone service to Accipiter.**

5 **A.** For the small portion of the Vistancia development where the utility trenches were closed
6 and the streets were paved, Accipiter was concerned that it could not bring its own lines to
7 every residence. Cox did not have excess conduit to every residence that it could provide
8 Accipiter. In order to allow Accipiter to provide telephone service to all Vistancia
9 residents, including the small portion of Vistancia that was developed first, Cox agreed to
10 provide Accipiter with wholesale service at a discount off of Cox's tariffed rates. The
11 wholesale discount rates are the same discount rates the Commission has approved for
12 Qwest - 12% for basic residential service and 18% for everything else. Cox agreed to
13 work with Accipiter to develop a mutually acceptable ordering and provisioning process.

14
15 **Q. How does the wholesale service with a discount benefit Accipiter?**

16 **A.** Under the 1996 Telecommunications Act, Cox does not have an obligation to provide
17 resale service to other providers at a discount. Only ILECs are obligated to provide resale
18 service at a discount. This wholesale service allows Accipiter to provide phone service to
19 any Vistancia resident that may request such service, even if Accipiter does not have its
20 own facilities to that resident. Moreover, given that Accipiter's tariffed rate for basic
21 service is approximately \$18 per month, Accipiter will realize a margin of more than \$6
22 per month for basic service because Cox will be reselling the service to Accipiter for only
23 \$11.44 (i.e. \$13.00 discounted by 12%). This resale discount is limited to those areas
24 where the trenches were closed as of December 1, 2005 - even though Accipiter had
25 access to open trenches as early as late July 2005 as a result of the settlement process.
26 Although the Settlement Agreement contains a trench closure map as of September 1,
27 2005, as contemplated by the Settlement Agreement, the parties to the Settlement

1 Agreement have continued to coordinate and cooperate in satisfying the terms of the
2 Settlement Agreement and have exchanged an updated trench closure map as of December
3 1, 2005 (as contemplated by Section III(3)(b). That updated map is attached to my
4 testimony as Attachment IJ-2.
5

6 **Q. Has Cox started providing wholesale service to Accipiter?**

7 A. Not yet. Accipiter has not yet requested Cox to do so, but we are prepared to develop the
8 ordering and provisioning process and to provide the service when Accipiter requests us to
9 do so.
10

11 **Q. Does the discounted resale telephone service to Accipiter address the concerns raised**
12 **by Accipiter, Staff and the Commission?**

13 A. I believe so. Accipiter, Staff and the Commission were concerned about how Accipiter
14 could provide telephone service in parts of Vistancia that were developed earlier and
15 whether the customers would have any other wireline choice. The discounted resale
16 telephone service allows Accipiter to do so and make a substantial profit margin given its
17 tariffed rate. Moreover, this arrangement allows Accipiter to meet any carrier of last resort
18 obligations that it may have in those particular areas. Cox is providing discounted service
19 that it is not otherwise obligated to provide and that the Commission may not be able to
20 order it to provide. Again, the Settlement Agreement provisions provide direct benefits to
21 Accipiter that ameliorate the concerns that have been expressed about the impacts of the
22 private easement arrangement at Vistancia.
23
24
25
26
27

1 4. Cancellation of the Cox/Developer Exclusive Marketing Arrangements

2
3 **Q. Mr. Johnson, please explain Section III(4) of the Settlement Agreement which**
4 **required Cox and the Vistancia developers to cancel its preferred marketing**
5 **arrangements.**

6 **A. Cox and Vistancia developers had entered into two preferred marketing agreements with**
7 **respect to the Vistancia development. One was the Co-Marketing Agreement (CMA)**
8 **which related to residential development. The other was the Property Access Agreement**
9 **(PAA) which related to commercial development. Those agreements, as with any**
10 **preferred marketing agreement, gave Cox certain exclusive marketing rights with**
11 **homebuilders and commercial developers in the Vistancia development. For example, as**
12 **is typical in such preferred marketing arrangements, Cox would have the exclusive right to**
13 **display its marketing materials in the model homes. Accipiter would have been able to**
14 **market in Vistancia through direct mail or the media, but it would not be able to put its**
15 **marketing materials in the model homes. Cox's preferred marketing arrangements were**
16 **similar to those set forth in the preferred provider agreements approved in Commission**
17 **Decision No. 61626 (April 1, 1999) and common in a number of other master planned**
18 **communities throughout the market, including DC Ranch, Anthem and Grayhawk.**

19
20 Under the Settlement Agreement, Cox and the Vistancia developers agreed to cancel the
21 CMA and PAA. In their place, Cox and the developers entered into a Residential Service
22 Agreement and Commercial Building Service Agreement, which basically provides that
23 Cox will continue to construct its network through Vistancia, but which contain no
24 preferred marketing arrangements. Those new agreements were reviewed and approved by
25 Accipiter and are attached to the Settlement Agreement as Exhibits 7 and 8. As a result,
26 Cox no longer has any exclusive right to market at Vistancia. Accipiter is no longer
27 precluded from placing its marketing materials in the model homes.

1 **Q. Have Cox and the Vistancia developers executed the documents cancelling the CMA**
2 **and PAA?**

3 A. Yes, on November 30, 2005.
4

5 **Q. What about Cox's ability to enter into exclusive marketing arrangements with**
6 **individual homebuilders, as opposed to the Vistancia developers?**

7 A. Under Section III(4)(a), any requirement that the Vistancia developers had with
8 homebuilders or commercial builders that would require those entities to provide Cox with
9 exclusive marketing rights have been rescinded. So those entities have no contractual
10 commitment to Cox. Moreover, in Section III(4)(b), Cox warrants that (i) it has not
11 entered into any exclusive marketing arrangements with individual homebuilders or
12 commercial builders with respect to the Vistancia, other than the CMA and PAA which are
13 being terminated and (ii) it has no intention of entering into any exclusive marketing
14 arrangements in the Vistancia development in the future. Given that Cox and Accipiter are
15 horizontal competitors, they cannot agree that Cox will not do business with potential
16 customers in a particular manner. However, the Settlement Agreement contains provisions
17 addressing any potential future marketing arrangements. Cox reiterates its intent not to
18 enter into any exclusive marketing arrangements at the Vistancia development.
19

20 **Q. How will homebuilders and commercial developers know that they can allow**
21 **Accipiter and other telecommunications providers to advertise in their facilities?**

22 A. In Section III(4)(c), the Vistancia developers have agreed to take certain actions to provide
23 that notice. Indeed, homebuilders and commercial developers will be encouraged not to
24 enter into any exclusive marketing arrangements with any telecommunications provider.
25 This would include, for example, the Qwest CLEC because Vistancia is now outside of
26 Qwest's ILEC service area.
27

1 **Q. Finally, what is the purpose of Section III(4)(d)?**

2 A. This section confirms the ability to mount satellite antennas on homes in Vistancia and was
3 included at the request of Accipiter. Apparently, Accipiter may use satellite television as a
4 means of providing its triple play until it has an IPTV product.
5

6 **Q. What is the significance of Section III(4)?**

7 A. By eliminating Cox's exclusive marketing arrangements, Accipiter is able to fully market
8 its service, including in the model homes. It also does not face the hurdle of having the
9 homebuilders marketing a particular telephone provider at the point of sale. That scenario
10 is beneficial for a small provider with little name recognition. Most large developments
11 have some sort of preferred provider arrangement in place. Developers like the certainty
12 that the agreements bring because it typically means that that provider has agreed to have
13 facilities in place and service on the day the first resident moves in. The arrangements
14 avoid problems that had occurred in the past where telephone providers did not – or would
15 not – extend their facilities to a development in a timely manner. The Commission
16 recognized the potential public benefits in approving preferred marketing arrangements for
17 Anthem and Civano back in 1999. Since then, such arrangements have become
18 commonplace.

19
20 As a result of the Settlement Agreement, Accipiter has an opportunity to compete on a
21 level marketing playing field and may be able to improve its brand recognition.
22

23 **Q. Do you believe that the cancellation of the exclusive marketing arrangements address
24 the concerns expressed by Accipiter, Staff and the Commission?**

25 A. Yes. Although some Commissioners and Staff have expressed a belief that preferred
26 provider arrangements do provide a public benefit and are not against the public interest,
27 Cox understood that the real concern at Vistancia was the existence of *both* the preferred

1 provider arrangement and the novel private easement arrangement. In an effort to
2 eliminate those concerns, Cox agreed to eliminate both the private easement and the
3 exclusive marketing arrangement at Vistancia. Moreover, not only is the exclusive
4 marketing arrangement being cancelled for telephone, it is also be cancelled for both video
5 and high-speed internet services. I believe the cancellation of this marketing contract (the
6 "PPA"), particularly one involving non-jurisdictional services, provides relief to Accipiter
7 that this Commission could not grant if the complaint had gone to hearing.
8

9 **5. Payments to Accipiter**

10
11 **Q. Why did Cox and the Developer provide Accipiter with a monetary payment?**

12 A. As a final term to reach a settlement, the parties agreed to the payment amount in the
13 amount of \$1 million. Again, the Commission could not award Accipiter monetary
14 damages in the complaint proceeding. I would assert that the payment to Accipiter should
15 be considered to be in lieu of a fine or penalty by the Commission, which that would not
16 benefit Accipiter in any manner.
17

18 **Q. What portion of the monetary payment did Cox provide?**

19 A. Cox paid \$250,000. Accipiter has received the full payment set forth in Section III(5). In
20 return, as required by the Settlement Agreement, Accipiter filed the two notices with the
21 Commission and with the superior court.
22

23 **6. Other Settlement Agreement Provisions**

24
25 **Q. Could you please discuss other key provisions of the Settlement Agreement?**

26 A. First, there had been a confidentiality provision in Section III(8), once all parties agreed,
27 the entire Settlement Agreement was filed with the Commission.

1 Second, in Section III(9), the parties to the Settlement Agreement expressly agreed that
2 noting in the Settlement Agreement was intended to restrict the parties' positions with
3 respect to the generic docket on preferred provider arrangements.

4 Third, Section III(7) provides that there is no precedential effect of the terms being offered
5 in settlement of the disputed claims. For example, this was intended to preclude another
6 telephone company from demanding that Cox provide it with discounted resale service –
7 which Cox otherwise would not be obligated to do under current law.

8

9 **V. THE SETTLEMENT AGREEMENT SHOULD BE APPROVED**

10

11 **Q. Why should the Settlement Agreement be approved?**

12 A. First and foremost, the complainant in this docket, Accipiter, has signed the Settlement
13 Agreement and is (and has been) benefiting from the Agreement. The Agreement
14 addressed all of Accipiter's concerns: access to rights of way and customers, elimination of
15 preferred provider arrangements, and payment of damages. Second, as explained above,
16 Cox believes that the Settlement Agreement addresses the concerns that the Commission
17 and Staff have expressed over the situation at Vistancia at least to the extent that Cox and
18 the settling parties could address those concerns. Cox is not in a position to dictate the
19 actions of a municipal government. Third, to the extent that there are remaining concerns
20 about exclusive marketing arrangements or even access issues that affect the
21 telecommunications industry as a whole, the Commission already has a generic docket
22 opened that can address those issues while providing due process to all affected parties.

23

24 **Q. Are there any other considerations that the Commission should take into account in**
25 **deciding whether to approve the Settlement Agreement and dismiss the complaint in**
26 **this docket?**

27 A. Yes, I think there are two things that need to be considered to put this docket in context:

1 the state of preferred provider arrangements in Arizona today and the issue of how to
2 balance access with private property rights.

3
4 **Q. Please discuss the preferred provider issue.**

5 A. As set forth in Ms. Christle's testimony, Cox's focus with respect to Vistancia was a basic
6 preferred provider arrangement that provided for exclusive marketing. The concept of
7 compensation to a developer for exclusive marketing arrangements in a large planned
8 development was approved by the Commission back in 1999 with respect to Qwest's
9 service to Anthem. In Decision No. 61626 (Docket No. T-01051B-99-0057, April 1,
10 1999), the Commission approved a "Preferred Marketing Agreement" between US West
11 and Anthem Arizona and between US West and Civano. The Anthem agreement provided
12 US West would waive its \$427/lot land development fee in exchange for exclusive
13 preferred provider status. See Application, Docket No. T-01051B-99-0057. However, US
14 West could recoup its land development fees if the number of access lines did not meet or
15 exceed 95% of the total number of lots within each plat at the end of five years. In the
16 Civano agreement, US West could recoup its fees if the number of access lines did not
17 meet or exceed 100% of the total number of lots within each plat at the end of five years.
18 In approving the agreements, the Commission noted that it was a "new process for
19 providing facilities to serve new housing developments" and that the agreements were
20 "reasonable" and "not anti-competitive because [they did] not prevent other carriers from
21 serving potential customers in the developments." Decision No. 61626 at 5. This decision
22 set a new landscape for serving large planned developments that would require enormous
23 upfront capital expenditures so as to ensure that telecommunications service would be
24 available when the first resident moved in.

25
26 Subsequent to 1999, preferred provider agreements became relatively common for planned
27 community developments and large housing developments. Those agreements often cover

1 video and high-speed internet services in addition to telephone service.

2
3 **Q. What are the general benefits of preferred provider arrangements?**

4 A. They provide numerous benefits to consumers and to property owners and developers. For
5 consumers, they ensure immediate access to communications services as soon as the
6 consumer purchases or moves into his or her residence. This is particularly important in
7 large master-planned communities where one or more of the services might not be readily
8 available due to the cost of bringing service to the community or because a provider
9 perceives the return on investment to be questionable. From the standpoint of the property
10 owner/developer, the ability to market residences with assured access to communications
11 services enhances the property value and makes the residences more marketable and more
12 competitive with other properties for sale by other developers. The agreements also
13 benefit the property owner (and presumably reduce the overall costs of the residences) by
14 providing a source of revenue to the property owner once the services of the preferred
15 provider reach a certain percentage in the development. Finally, because providers such as
16 Cox and Qwest necessarily must compete for access to residential developments (as the
17 preferred provider or otherwise) and cannot control access to the developer's property on
18 their own, the competition for preferred provider arrangements benefits both consumers
19 and property owners/developers by keeping rates low, increasing the level of capital
20 expenditures, and expanding the scope of available communications services.

21
22 **Q. What has been Cox's historic policy position on access?**

23 A. I would submit that Cox has pressed for increased and equal access for carriers,
24 unfortunately without much success. Carriers have often faced access issues in trying to
25 provide service to as many customers as possible. However, historically, there has been a
26 tendency to favor private property rights over access. Property owners in Arizona, such as
27 apartment owners or commercial building owners, have exercised property rights to either

1 deny access to or impose conditions for access on telecommunications carriers. Although
2 this Commission has strongly supported telecommunications competition, I suspect the
3 difficulty for the Commission with respect to access is the lack of jurisdiction over the
4 property owners.

5
6 In fact, the Commission has addressed the issue of whether a property owner must provide
7 access to other carriers as a condition of service – and, in Decision No. 61955 (September
8 17, 1999), the Commission stated that:

9 We believe that it would be inappropriate to require as a condition
10 of service and under the MDU agreements with US WEST, that
11 property owners not preclude tenants from selecting a service
12 provider other than US WEST.”

13 Decision No. 61955, ¶17. The effect of that finding is that a property owner does not have
14 to provide access to its property to any carrier that needs such access to provide service to
15 tenants on the property. Decision No. 61955 arose in the context of a US West tariff
16 seeking authority to waive typical construction charges to multi-tenant environments,
17 including residential apartment complexes. The waiver of those charges would be done in
18 connection with the execution of a preferred provider agreement. Several CLECs,
19 *including Cox*, challenged the tariff. Moreover, Staff stated that it believed tenants within
20 an MTE should have the right to select a provider other than US West and recommended
21 that “US West be required to add language to its tariff and the underlying MDU agreement
22 to indicate that, as a condition of service and under the terms of the subject MDU
23 agreement with US West, the property owner shall not preclude tenants from selecting a
24 service provider other than US West.” *Id.*, ¶10. At open meeting, the Commission rejected
25 Staff’s recommendation and amended the proposed decision by adding Paragraph 17 cited
26 above, which effectively allowed property owners to exclude carriers from its property.
27

1 Another example of Cox supporting increased access involves multi-dwelling units
2 (MDUs), such as apartment complexes. Cox pressed for a uniform wiring configuration at
3 MDUs that would provide all carriers equal access to the inside wire to serve customers.
4 See Docket No. T-00000A-02-0280. Although no standard was adopted, Cox presently
5 configures the wiring at new MDU construction in a manner that would allow another
6 carrier to easily attach to inside wire and reach individual customers.

7
8 Cox also has unsuccessfully pursued legislation and local franchise provisions that would
9 ensure equal access to MDUs.

10
11 **Q. What could Cox have done differently with respect to providing service to Vistancia?**

12 **A.** There certainly was nothing wrong with negotiating a standard preferred marketing
13 arrangement for Vistancia or requiring upfront construction costs given the remote location
14 of the Vistancia development. Indeed, I understand that the Vistancia developers
15 approached both Qwest and Accipiter about providing service before turning to Cox --
16 both wanted substantial concessions to bring service to the area in terms of construction
17 costs. When the private easement concept was presented by the Vistancia developer, Cox
18 admittedly agreed to submit to the access requirements that were set forth by the Vistancia
19 developers. Although it may be asserted that Cox should have refused to agree to the
20 arrangement and challenged the City of Peoria's grant of the MUE, I believe we acted in
21 good faith and did not do anything inappropriate in agreeing to an arrangement that would
22 have to be approved by the City of Peoria and that we had been told had been used in other
23 states. Moreover, our access arrangements were expressly non-exclusive.

24
25 Cox has been a strong proponent of access in Arizona and elsewhere. Cox's service to
26 Vistancia under the private easement arrangement apparently just slipped through Cox's
27 documented policy of encouraging access. I submit that this situation was an unfortunate

1 anomaly for Cox. Indeed, as Staff has discovered in reviewing all of Cox's exclusive
2 marketing arrangements, there is no other private easement arrangement.

3
4 As has been explained repeatedly, the private easement arrangement was not Cox's idea,
5 and Cox has never participated in such an arrangement either before or after Vistancia.
6 Cox understands the Commission's concerns regarding the private easement arrangement.
7 Cox submits that it has rectified those concerns with the Settlement Agreement, which
8 provides a myriad of provisions that directly benefit both Accipiter and the competitive
9 landscape at Vistancia. Indeed, Cox believes that the Settlement Agreement provides relief
10 beyond what this Commission could have ordered had the complaint gone to hearing. The
11 immediately aggrieved party, Accipiter, is satisfied by the terms of the Settlement
12 Agreement, and it is probably in the best position to know whether it has the tools that it
13 needs to compete in the Vistancia development.

14
15 **Q. Why should the Commission approve this Settlement Agreement and dismiss the**
16 **complaint without further sanctioning Cox?**

17 **A.** Historically, Cox has been very sensitive to the Commission's concerns and has tried to be
18 an effective competitive option in the Arizona telecommunications market. As discussed,
19 Cox has supported improved access to customers but has often had its pro-access positions
20 rejected. Once the competitive landscape was set – for example, with respect to preferred
21 provider agreements – Cox has undertaken to use sanctioned tools to in an effort to
22 compete with Qwest and other carriers. I truly believe that the Vistancia situation is an
23 anomaly in Cox's actions in Arizona, and Cox regrets that it did not more closely
24 scrutinize the MUE arrangement proposed by the Vistancia developers. However, Cox has
25 aggressively sought to address concerns of the Commission and Accipiter and has entered
26 into a Settlement Agreement that provides relief beyond what the Commission could
27 award. Indeed, Cox listened carefully to Staff's suggestions in trying to craft the

1 settlement. If Cox is further sanctioned by the Commission, the Commission may well
2 chill any future cooperative responses by regulated entities, potentially to the detriment of
3 complainants who must then expend substantial resources to litigate their complaint and to
4 the detriment of customers who may be unable to receive the full panoply of competitive
5 services while disputes are being resolved though less efficient and more time-consuming
6 litigation means.

7
8 Finally, Cox has a very vigorous compliance program in place and, indeed, has had it in
9 place for many years. We have a Code of Excellence that includes an Anti-Trust Policy.
10 All employees are required to read and acknowledge that they have the read the policy.
11 Cox has regular training for its employees and intends to schedule another round of
12 training on the anti-trust policy. Cox also has implemented other policies to insure that
13 nothing like this will happen like this in the future.

14
15 **VI. CONCLUSION**

16
17 **Q. What is Cox requesting the Commission do in this docket?**

18 **A.** Cox requests that the Commission approve the Settlement entered into by the Complainant
19 and Respondents in this docket and dismiss this docket without further action by the
20 Commission.

21
22 **Q. Does that conclude your testimony?**

23 **A.** Yes.
24
25
26
27

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
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MARC SPITZER
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KRISTIN K. MAYES

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.,
AND COX ARIZONA TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

PHILIP A. DE... & P... PLLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

DIRECT TESTIMONY

OF

IVAN JOHNSON

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

ATTACHMENTS

IJ-1 Through IJ-2

April 5, 2006

ATTACHMENT

IJ-1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of this 3RD day of November, 2005 ("Effective Date") between Accipiter Communications, Inc., a Nevada corporation; CoxCom, Inc., a Delaware corporation, on behalf of itself and its "Affiliates" (as defined in Article I(4) below); Cox Arizona Telcom, LLC, a Delaware limited liability company; Vistancia LLC (fka Shea Sunbelt Pleasant Point, LLC), a Delaware limited liability company; and Vistancia Communications, LLC, an Arizona limited liability company.

I. DEFINITIONS

1. As used herein, "ACC" refers to the Arizona Corporation Commission.
2. As used herein, the "ACC Action" refers to the complaint filed by Accipiter before the ACC in Docket No. T-03471A-05-0064.
3. As used herein, "Accipiter" refers to Accipiter Communications, Inc., a Nevada corporation.
4. As used herein, "Affiliates" shall mean and refer to with respect to any person or entity (i) any person or entity directly or indirectly controlling, controlled by, or under common control with such person or entity; (ii) any person or entity owning or controlling five percent (5%) or more of the voting securities or voting control of such person or entity; or (iii) any person or entity who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any person or entity described in clauses (i) or (ii).

5. As used herein, "CMA" refers to the Amended and Restated Co-Marketing Agreement between Developer, VC, LLC, and CoxCom, dated September 25, 2003.

6. As used herein, "Cox" refers to Cox Telcom and CoxCom.

7. As used herein, "CoxCom" refers to CoxCom, Inc., a Delaware corporation.

8. As used herein, "Cox Telcom" refers to Cox Arizona Telcom, LLC, a Delaware limited liability company.

9. As used herein, "Developer" refers to Vistancia LLC (fka Shea Sunbelt Pleasant Point, LLC), a Delaware limited liability company.

10. As used herein, "MOU" refers to the Memorandum of Understanding entered into by the Parties, dated September 1, 2005.

11. As used herein, "MUEs" refer to the Multi-Use Easements which have been designated on plats and maps and other instruments pertaining to the Vistancia development.

12. As used herein, "NELA" refers to a Non-Exclusive License Agreement.

13. As used herein, "PAA" refers to the Amended and Restated Property Access Agreement between Developer, VC, LLC and CoxCom, dated September 25, 2003.

14. As used herein, "Parties" refers collectively to Accipiter, Developer, VC, LLC, Cox Telcom, and CoxCom.

15. As used herein, "PUEs" refer to Public Utility Easements.
16. As used herein, "Released Claims" refers to all claims described in Paragraph III(6) below.
17. As used herein, the "Superior Court Action" refers to Cause No. CV2005-010727, filed by Accipiter in the Superior Court of Arizona, Maricopa County.
18. As used herein, "VC, LLC" refers to Vistancia Communications, LLC, an Arizona limited liability company.
19. As used herein, "Vistancia" refers to Developer and VC, LLC.
20. As used herein, the "Vistancia Development" refers to the approximately 7,100-acre master planned community, including certain planned commercial buildings, located within the city limits of the City of Peoria at roughly the intersection of Jomax and El Mirage Roads.

II. RECITALS

1. On June 30, 2005, Accipiter filed the Superior Court Action against Cox Telcom, CoxCom, Cox Communications, Inc., Developer, VC, LLC, the City of Peoria and others alleging claims for violation of A.R.S. § 44-1402, violation of A.R.S. § 44-1403, promissory estoppel, tortious interference with business expectancy, negligent misrepresentation, common law fraud, punitive damages, declaratory judgment and an injunction against issuing building permits.

Marketing Agreement); Roadway and Utility Easement; Second Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions for Vistancia; and Consent to Actions in Lieu of a Member's Meeting of Vistancia Maintenance Corporation, copies of which are attached as Exhibits 1A, 1B, 1C, 1D, 1E, 1F, and 1G, respectively. Vistancia has commenced and shall diligently pursue, using its best efforts, the review and approval process of these documents by the City of Peoria, which it is estimated may take from 30 to 60 days. The Parties acknowledge that, as part of its review process, the City of Peoria may request certain non-material modifications to these documents or additional non-material documents to accomplish the MUE-to-PUE conversion process. Vistancia and Cox shall execute any reasonably necessary or reasonably desirable additional documents and shall, using their best efforts, take any additional steps reasonably necessary to convert the MUEs at Vistancia Development to PUEs, until they have fully accomplished the MUE-to-PUE conversion process. The Parties agree that execution and recordation of these documents, including any non-material revisions to or additional documents requested by the City of Peoria, will discharge Vistancia and Cox obligations under this paragraph to convert the MUEs to PUEs. The Parties acknowledge that conversion of the MUEs to PUEs will require action by the City of Peoria, which

city action will include proper consent and execution of documents and may also include a formal vote or other actions by the Peoria City Council or other similar municipal actions. The Parties anticipate that the necessary city actions will be promptly accomplished. However, if, despite Vistancia's and Cox's best efforts, the City of Peoria refuses to undertake the city actions needed to convert the MUEs to PUEs, then Vistancia may satisfy its obligations under this subparagraph by executing and providing a NELA as described in the next subparagraph (b) below to Accipiter.

- b. VC, LLC and Developer have provided their permission to allow Accipiter in the MUEs pending their conversion to PUEs. Vistancia will execute a NELA substantially in the form set forth in Exhibit 2, free of charge, if requested by Accipiter. Cox consents to this grant of permission. However, it is Accipiter's responsibility to obtain any other approvals for its access to and construction in the MUEs that may be required by others, for example, including but not limited to meeting any requirements imposed by the City of Peoria for such construction and access. Cox agrees that the grant by VC, LLC of a NELA to Accipiter under this paragraph does not constitute a breach or violation of any of the terms of the agreements between Cox and Vistancia,

including but not limited to the CMA and PAA. If the City of Peoria refuses to take the city actions needed to convert the MUEs to PUEs, as provided in the above subparagraph (a), Vistancia shall promptly provide Accipiter, free of charge, with a fully executed permanent NELA substantially in the form set forth in Exhibit 2.

- c. Cox and Developer agree that in the future they shall not, independently, jointly, or with third parties, participate in a communication services private easement access arrangement in Arizona similar to the communication services private easement access arrangement that was used at the Vistancia Development and was the subject of the Superior Court Action and the ACC Action.

2. Provision of Conduit and Land to Accipiter

- a. CoxCom shall provide the following conduit, along with copies of existing engineering drawings related to the specifications, location and layout of the conduit, to Accipiter at no cost to Accipiter: (i) the conduit identified on Exhibit 3 attached hereto and (ii) the conduit in and along Vistancia Blvd. from Highway 303 to the entrance of the Vistancia Development. The conduit shall be 2" in diameter and shall include connections to two CEVs ("controlled environment vaults") (one near APS substation and one north of current development) as generally depicted on the conduit map

attached as Exhibit 3. CoxCom shall provide Accipiter: (i) access to the conduit at mutually agreed CoxCom junction points with CoxCom installing a 2" conduit stub outside each CoxCom junction point and (ii) a bill of sale to cover all conduit and stubs as attached as Exhibit 4. Cox shall incur the expense to disconnect the conduit from the CoxCom above-ground facilities. Upon transfer of ownership of the conduit to Accipiter, Accipiter shall assume responsibility for use, maintenance and repair of the conduit. However, Accipiter shall not sell, lease or otherwise transfer ownership of the conduit to another entity, unless the circumstances set forth in the last sentence of this sub paragraph have occurred. If the transferred conduit is empty on the fifth anniversary of the Effective Date of this Agreement, ownership of the conduit shall revert to CoxCom and Accipiter shall provide to CoxCom a bill of sale similar in form and substance to Exhibit 4, unless the circumstances set forth in the last sentence of this sub paragraph have occurred. To the extent Accipiter installs fiber into any portion of the transferred conduit during this five-year period, that portion of the transferred conduit is no longer subject to these restrictions or reversion rights.

- b. Developer shall promptly convey by special warranty deed, in fee title, free of charge, and without liens or encumbrances, other than

permitted exceptions described below, two parcels of land to Accipiter for its CEV locations. The two CEV sites are generally identified as "Accipiter Vault Location" on the attached Exhibit 3. Developer shall execute and record with the Maricopa County Recorder, a Declaration of De-Annexation, and a Declaration of Property Development Restrictions for each of the two CEV parcels, and execute, and cause to be recorded and delivered to Accipiter a Special Warranty Deed for each of the two CEV parcels. The Declaration of De-Annexation, Declaration of Property Development Restrictions, and Special Warranty Deed for the southern CEV parcel shall be in the forms attached as Exhibits 5A, 5B, and 5C, respectively. The Declaration of De-Annexation, Declaration of Property Development Restrictions, and Special Warranty Deed for the northern CEV parcel shall be in the forms attached Exhibits 5D, 5E, and 5F, respectively. The legal description of these CEV parcels are as set forth in Exhibit A to each of the Special Warranty Deeds (Exhibits 5A and 5D), and the permitted title exceptions for each CEV parcel are as set forth in Exhibit B to each of the Special Warranty Deeds (Exhibits 5A and 5D). Notwithstanding anything in this Agreement or in the permitted exceptions to the contrary, any assessments and real property taxes against the two CEV parcels attributable to the calendar year in which title is conveyed to Accipiter and to all

times prior to said year (whether or not a lien or then due or payable) shall be promptly paid in full by Developer. The Parties agree that no particular value is assigned to any particular consideration given in this Agreement, however, for the purpose of submitting the required "Affidavit of Property Value" with the recording of the Special Warranty Deeds, Developer and Accipiter agree that \$5,000 is a reasonable value for each CEV parcel and shall be reflected on each Affidavit of Property Value to be submitted for the CEV parcels. In addition to conveying the two CEV parcels, Developer shall provide all easements and/or rights-of-way reasonably necessary to use the two CEV sites for the purposes intended, for example, including but not limited to public or private perpetual rights-of-way for ingress/egress, for bringing electric power to the CEV sites, and for bringing communications cables to and from the various conduits running throughout the Vistancia Development.

3. Provisions of Telephone Resale to Accipiter

- a. Cox Telcom shall offer Accipiter resold telephone service at the wholesale discount of 12% for basic telephone service (i.e. Cox Telcom's local access line residential flat rate service set forth in § 3.1.2.2(b) of Cox Telcom's Arizona CC Tariff No. 1 Local Exchange Service Tariff on file with the ACC) and 18% for all

other ACC regulated telephone services. The provision of resold telephone service will be subject to the development of a mutually acceptable ordering and provisioning process.

- b. This wholesale discount shall apply only to the phases of the Vistancia Development in which the utility trenches are closed as of December 1, 2005. This wholesale discount shall not apply in the remainder of the Vistancia Development. Exhibit 6 reflects trench closure as of September 1, 2005. A revised Exhibit 6 shall be developed by the Parties to reflect trench closure as of December 1, 2005.

4. Cancellation of Cox/Developer Exclusive Marketing Arrangements

- a. The Cox/Developer preferred provider arrangement as set forth in the CMA and PAA shall be promptly cancelled except that Cox and Developer will execute a replacement CMA and PAA which require Cox to continue its non-exclusive provisioning of communication services to current and future subscribers in the Vistancia Development and continue its build-out of communication facilities throughout the Vistancia Development. The replacement CMA and PAA are titled "Residential Service Agreement" and "Commercial Building Service Agreement" respectively and shall be substantially in the forms attached as Exhibits 7 and 8. Cox and its Affiliates shall no longer

compensate Developer for marketing services, and Developer, Cox, and their Affiliates shall no longer require homebuilders or commercial developers to market exclusively Cox services in the Vistancia Development. Additionally, Developer, Cox, and their Affiliates shall promptly terminate, cancel and unequivocally rescind, excuse and otherwise end any such exclusivity provisions relating to the provision of communication services or relating to the marketing of communication services that may exist in homebuilders' and commercial developers' contracts with Developer or VC, LLC regarding the Vistancia Development. Developer, Cox, and their Affiliates shall not enter into any exclusive marketing arrangements between themselves relating in any way to providing communication services in the Vistancia Development.

- b. Vistancia and Cox hereby jointly and severally expressly represent and warrant that, together or independently, they have not entered into any exclusive marketing arrangements with homebuilders or commercial developers relating in any way to providing communication services in the Vistancia Development other than the presently existing Vistancia/homebuilder contract provisions, which are being terminated, discontinued, and no longer required as set forth above. Additionally, Cox shall expressly reiterate and

represent to the ACC Staff, the Administrative Law Judge, and the ACC Commissioners that it and its Affiliates have no intention of entering into any exclusive marketing arrangements with homebuilders or commercial developers relating in any way to providing regulated telecommunications services in the Vistancia Development. Accipiter may request and advocate that the ACC order Cox not to enter into any exclusive marketing arrangements with homebuilders or commercial developers relating in any way to providing regulated telecommunications services in the Vistancia Development. In the future, should Cox enter into any such exclusive marketing arrangements with any homebuilders or commercial developers relating in any way to providing communication services in the Vistancia Development, Accipiter has the right to challenge any such arrangements in any appropriate forums, and nothing in this Agreement shall adversely affect such right to challenge any such Cox arrangement. Additionally, in the future, should Cox change its intention and decide it might enter into any exclusive marketing arrangements with any homebuilder or commercial developer relating in any way to providing communication services in the Vistancia Development, Cox shall first promptly provide Accipiter with written notice of its intention to do so and the identity of the homebuilder or commercial developer at least 45 days in advance of entering into any such

arrangement. Accipiter shall be free to approach and compete for the business of any such homebuilder or commercial developer in the Vistancia Development. Should Cox breach its obligation to provide notice to Accipiter as set forth in this subparagraph, or should Developer breach its best efforts obligations under subparagraph III(4)(c) below, Accipiter's remedy for such breach shall not include voiding this Agreement, and shall not include setting aside or otherwise affecting the mutual releases between the Parties as of the date of this Agreement, but Accipiter may seek other appropriate remedies including but not limited to injunctive relief.

- c. Developer shall use its best efforts to encourage homebuilders or commercial developers in the Vistancia Development not to enter into exclusive marketing arrangements with communication services providers. As used herein, Developer's "best efforts" shall be satisfied by: (i) advising in writing (and not subsequently indicating otherwise) existing homebuilders and commercial developers that they are no longer required to market exclusively Cox services in their models or marketing offices and that they are discouraged from entering into exclusive arrangements with any communication service provider, and (ii) advising in writing and orally (and not subsequently indicating otherwise) existing and

future homebuilders and commercial developers that they should consider the services of any communication services provider for their development and that they are discouraged from entering into exclusive arrangements with any communication service provider, and (iii), as a continuing duty until all sales to homebuilders and commercial developers in the Vistancia Development are complete, supplying to any existing and future homebuilders and commercial developers in the Vistancia Development written information concerning the communication services offered in the Vistancia Development by Accipiter or Cox when either requests such distribution of its written information in writing and supplies the written information to Developer. As used herein, "best efforts" does not include any requirement on Developer's part to refuse to sell property in the Vistancia Development to any prospective homebuilder or commercial developer or to agree to a reduced sales price to entice any prospective homebuilder or commercial developer to forego its desire to enter into an exclusive marketing arrangement.

- d. Developer shall allow the mounting of external communications antennae on residences at the Vistancia Development to the extent required under federal law and permitted by any covenants,

conditions and restrictions recorded in relationship to the Vistancia Development.

5. Payment to Accipiter

Cox and Developer shall jointly and severally pay in good funds to Accipiter the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000). This payment shall be made through an escrow as follows: Within three business days of the execution of this Agreement, Cox and Developer shall pay the \$1,000,000 into an interest bearing escrow account No. 25-4963 established with Arizona Escrow & Financial Corporation. Accipiter shall be responsible for all normal and customary escrow fees and costs. The full \$1,000,000 with interest shall be released to Accipiter from the escrow immediately upon the occurrence of the following:

(i) Execution of this Agreement, including its release provisions in paragraph 6 below;

(ii) the filing of two Notices of Dismissal in the Superior Court Action substantially in the forms attached as Exhibits 9 and 10. The Notice of Dismissal of the Parties to this Agreement and their Affiliates shall be "with prejudice." The Notice of Dismissal of all other parties named in the Superior Court Action shall be "without prejudice"; and

(iii) either (a) the filing by Accipiter of a Notice of Withdrawal with Prejudice from the ACC Action including an explanatory statement in the Notice that Accipiter has fully released with prejudice all claims set forth against Respondents in that docket substantially in the form attached as Exhibit 11, or (b) the withdrawal, dismissal or other resolution with prejudice of the ACC Action.

6. Mutual Release

Accipiter, Cox and Vistancia mutually agree, and subject to the conditions set forth in this paragraph, do hereby fully, finally, and forever release and discharge each other and any and all affiliated corporations, partnerships, other business entities, including present and former officers, directors, employees, partners, shareholders, attorneys, agents and any other affiliated Parties or entities from and against any and all manner of action or actions, cause or causes of action, liabilities, suits, debts, accounts, books, covenants, contracts, controversies, torts, promises, judgments, claims and demands whatsoever in law or in equity which they may have had, now have or which they may have as of the Effective Date of this Agreement, including but not limited to the claims any of the Parties did allege or could have alleged in either the ACC Action or the Superior Court Action. Said mutual release is intended to cover, and does cover, any and all demands, claims, causes of actions and suits in law or in equity which the Parties have or may have for damages, losses or expenses

including those hereafter discovered even though presently unknown and/or unexpected arising out of or relating in any manner to the Superior Court Action and/or the ACC Action. Furthermore, said mutual release includes the Parties, their successors, their predecessors, assigns, heirs, personal representatives, administrators and executors and marital communities and other affiliated entities and affiliated persons as set forth above. Said mutual release is contingent upon all of the following conditions: (i) the full payment from the escrow to Accipiter as set forth in paragraph III(5) above, (ii) the satisfaction of the conditions for such payment from escrow as set forth in paragraph III(5) above, (iii) the receipt by Accipiter of the Bill of Sale to the conduit as set forth in Paragraph III (2) above, (iv) the receipt by Accipiter of the executed and recorded Special Warranty Deeds for the CEV parcels as set forth in Paragraph III (2) above, and (v) either the completion of the conversion of the MUEs to PUEs, or if that is not possible because the City of Peoria has refused to act, the execution and delivery of a NELA as set forth in Paragraph III(1) above. Upon the written request of a Party after satisfaction of these conditions, the other Parties shall provide written acknowledgement to the requesting Party that these release contingencies have been satisfied. Additionally, contingent upon the MUEs first being converted to PUEs, Accipiter does hereby fully, finally, and forever release and discharge the City of Peoria, its officials, officers, and employees from any all manner of action or actions, cause or causes of

action, liabilities, suits, debts, accounts, books, covenants, controversies, torts, claims and demands whatsoever in law or in equity which Accipiter may have had, now has or which it may have as of the Effective Date of this Agreement, arising out of or relating in any manner to the allegations set forth in the Complaint it filed in the Superior Court Action and in the ACC Action. The City of Peoria, its officials, officers, and employees are intended third party beneficiaries of this Agreement for purposes of this release. Should the City of Peoria refuse or fail to act to convert the MUEs to PUEs, this release shall not be effective as to the City of Peoria, its officials, officers, and employees, but rather shall be a nullity as to the City of Peoria, its officials, officers, and employees. Should the City of Peoria convert the MUEs to PUEs, upon the written request of a Party, Accipiter shall promptly provide its written acknowledgement confirming the efficacy of its release of the City of Peoria. The above mutual releases between the Parties do not apply to obligations created by this Agreement.

7. No Precedential Effect

With the exception of paragraph III(1)(c), all of the above terms are limited to the Vistancia Development (or a portion thereof), are being offered in connection with settlement of disputed claims and have no precedential effect in any other context.

8. Confidentiality

Except (i) as required by applicable law and regulation, or (ii) as needed to prosecute or defend a judicial or administrative proceeding, or (iii) to the extent disclosed with the Parties consent, or (iv) if disclosed to any person or entity other than a Party or its Affiliates by someone other than the Party against whom a violation of this paragraph is asserted, the Parties agree to keep confidential the terms of this Agreement. Notwithstanding the foregoing, all Parties may disclose this Agreement to their lenders (such as but not limited to Rural Utilities Service), shareholders, attorneys, accountants, and other advisors with a need to know and who agree to maintain the confidence of the terms of this Agreement. The Parties further acknowledge that the terms of this Agreement have already been disclosed by Cox to the ACC and its Staff. The Parties further acknowledge and agree that a copy of this Agreement will be provided to the ACC, its Staff and Hearing Officer designated as confidential, and the Parties hereby consent to such confidential disclosure. Any future disclosures to the ACC, its Staff, or Hearing Officer shall be designated as confidential. The Parties further acknowledge and agree that a copy of this Agreement may be provided to the United States Department of Justice designated as confidential, and the Parties hereby consent to such confidential disclosure. The Parties further acknowledge and agree that the terms of this Agreement reasonably necessary to carry out the escrow

will be disclosed confidentially to the escrow officer, and the Parties hereby consent to such confidential disclosure. If any Party receives a judicial or administrative subpoena for production of this Agreement, the receiving Party shall immediately notify in writing all other Parties and provide them a copy of the subpoena and shall delay production for a period of ten (10) days to allow the other Parties, should they desire, to file and prosecute any motions for protective order or similar proceedings. The Parties further agree that, in the event of a breach of this Confidentiality provision, the breaching Party will reimburse the non-breaching Parties for all costs and reasonable attorneys' fees which may be incurred in connection with their efforts to enforce the terms hereof. The Parties further agree that any public statement about this Agreement will indicate only that the Parties have satisfactorily resolved the issues that were the subject of the disputes among them. In the event of a breach of this Confidentiality provision, any Party's remedy for such breach shall not include voiding this Agreement, and shall not include setting aside or otherwise affecting the mutual releases between the Parties as of the date of this Agreement, but a non-breaching Party may seek other appropriate remedies including but not limited to injunctive relief.

9. Other Regulatory Proceedings

Nothing in this Agreement is intended in any way to restrict the respective positions that the Parties may take with regard to issues of regulation of

preferred provider agreements in the currently pending ACC Generic Docket on that subject or in any future regulatory or other proceedings on that subject.

10. Breach of Agreement

In the event any Party breaches any term of this Agreement, the other Party[ies] shall have the right to pursue any and all remedies available in equity or under law for breach of this Agreement; the Parties acknowledging that any rights, duties or obligations between them have been merged into this Agreement. The prevailing Party[ies] in any dispute arising out of this Agreement shall be awarded their reasonable attorneys' fees and costs.

11. Warranty of Capacity to Execute

The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement; that they have the sole right and authority to execute this Agreement; and that neither they nor any person acting with authority to do so has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

12. Unknown Claims

This Agreement is intended to and does cover all claims for damages, both compensatory and punitive, whether or not known to the Parties as of the Effective Date, resulting from or arising out of the Released Claims.

13. Fees and Costs

The Parties shall bear their own costs, fees and other expenses incurred in connection with the Superior Court Action, the ACC Action and/or in connection with the preparation and execution of the MOU and this Agreement. No monies to be paid hereunder or otherwise are to reimburse any of the Parties for their attorneys' fees and costs.

14. Notices

Any notices in connection with this Agreement shall be given in writing at the addresses specified below or at such other address as any such Party specifies in writing.

If to Accipiter:

Mr. Charles Gowder
President & CEO
Accipiter Communications Inc.
2238 West Lone Cactus Drive
Suite 100
Phoenix, Arizona 85027
Phone: 928-501-5000
Fax: 928-501-5050
E-mail: cgowder@accipitercom.com

If to CoxCom and/or Cox Telcom:

J. Steven Rizley
Vice President and General Manager
CoxCom, Inc. dba Cox Communciations Phoenix
1550 West Deer Valley Road
Phoenix, AZ 85027

Copy to:
Corporate Legal
c/o Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, GA 30319

If to Vistancia, LLC and/or to VC, LLC:

Curtis E. Smith
6720 N. Scottsdale Road, Suite 160
Scottsdale, Az. 85253-4424
Phone: 480-905-0770
Fax: 480-905-1419
E-mail: csmith@sunbeltholdings.com

15. Acknowledgement of Disputed Liability

This Agreement is made as a compromise and settlement of disputed claims, liability for which is expressly denied by Cox and Vistancia. Nothing herein shall or can be construed as an admission by Cox or Vistancia as to the merits of any claim asserted against them.

16. Authority

The Parties represent and warrant that each of the individuals signing this Agreement has authority to sign on behalf of the entity for which they have acted as signatory.

17. Binding Effect

This Agreement is binding upon and shall inure to the benefit of the Parties and their heirs, personal representatives, successors, and assigns.

18. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

19. Controlling Law

This Agreement shall be construed and enforced pursuant to the laws of the State of Arizona.

20. Contractual Terms

The Parties acknowledge and hereby agree that the terms of this Agreement are contractual and not mere recitals, and that all agreements and understandings between them are embodied and expressed herein.

This Agreement may be modified only in a writing signed by all Parties.

This Agreement supersedes and replaces any and all prior agreements between the Parties, including, without limitation, the MOU. The Parties also acknowledge and agree that this Agreement is the product of negotiation and that the Agreement shall not be construed against the principal drafter.

21. Further Instruments and Acts

Each Party will execute such further documents and will perform such further acts as may be necessary or appropriate to effectuate this Agreement or its purposes.

22. Continuing Nature of Representations

The Parties agree that any and all representations and warranties made in this Agreement are true and correct on the date hereof, will be true and correct as of the date of performance hereunder, and shall survive the Parties' full performance of this Agreement.

EXECUTED as of the Effective Date set forth above.

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation

By Charles Gowder
Charles Gowder
President & CEO

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix,
on behalf of itself and its Affiliates

By: _____
J. Stephen Rizley
General Manager and VP

21. Further Instruments and Acts

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EXECUTED as of the Effective Date set forth above.

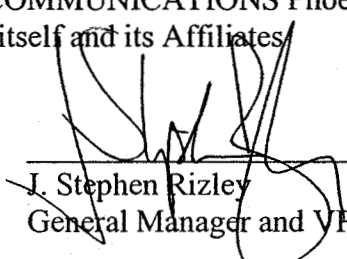
ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation

By

Charles Gowder
President & CEO

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix,
on behalf of itself and its Affiliates

By:



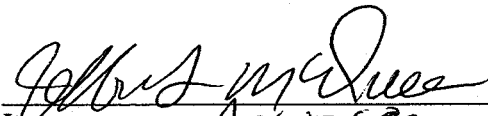
J. Stephen Rizley
General Manager and VP

COX ARIZONA TELCOM, LLC,
a Delaware limited liability company

By: _____
J. Steven Rizley
General Manager and VP

VISTANCIA, LLC, a Delaware limited liability company

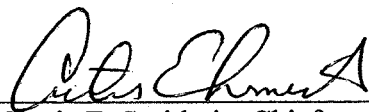
By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: 
Its: ASST SEC

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief
Operating Officer

COX ARIZONA TELCOM, LLC,
a Delaware limited liability company

By:



J. Stephen Rizley
General Manager and VP

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____

Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General Partner

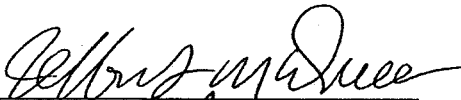
By: _____

Curtis E. Smith, its Chief
Operating Officer

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager


By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
Its: ASST sec

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

LIST OF EXHIBITS

- 1A Termination of Common Services Easements and Restrictions
- 1B Termination of Multi-Use Easement and Indemnity
- 1C Termination of Non-Exclusive License Agreement (re Property Access Agreement)
- 1D Termination of Non-Exclusive License Agreement (re Co-Marketing Agreement);
- 1E Roadway and Utility Easement
- 1F Second Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions for Vistancia
- 1G Consent to Actions in Lieu of a Member's Meeting of Vistancia Maintenance
- 2 Non-Exclusive License Agreement (temporary/perpetual)
- 3 Conduit and Vault Map
- 4 Bill-of-Sale (Conduit)
- 5A Declaration of De-Annexation (Southern CEV Parcel)
- 5B Declaration of Property Development Restrictions (Southern CEV Parcel)
- 5C Special Warranty Deed (Southern CEV Parcel)
- 5D Declaration of De-Annexation (Northern CEV Parcel)
- 5E Declaration of Property Development Restrictions (Northern CEV Parcel)
- 5F Special Warranty Deed (Northern CEV Parcel)
- 6 Utility Trench Closure Map
- 7 Residential Service Agreement
- 8 Commercial Building Service Agreement

- 9 Notice of Dismissal With Prejudice
- 10 Notice of Dismissal Without Prejudice
- 11 Notice of Withdrawal With Prejudice

WHEN RECORDED RETURN TO:

EXHIBIT "1A"

Vistancia, LLC
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

**TERMINATION
OF
COMMON SERVICES EASEMENTS AND RESTRICTIONS**

This Termination of Common Services Easements and Restrictions (the "Termination") is made and entered into as of the ___ day of _____, 2005, by and between VISTANCIA COMMUNICATIONS, L.L.C., an Arizona liability company ("Access Entity") and VISTANCIA, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC) ("Master Developer").

RECITALS

A. WHEREAS, Access Entity and Master Developer have previously entered into that certain Common Services Easements and Restrictions dated June 10, 2003, and recorded June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (the "CSER").

B. WHEREAS, Section 2.02 of Appendix A of the CSER provides that the CSER may be terminated by a written instrument signed by Access Entity and Master Developer (as the parties to the CSER).

C. WHEREAS, all agreements (other than the CSER) that incorporate Appendix A to the CSER have been terminated (or are concurrently herewith being terminated) by separate recorded instruments. Section 2.02 of Appendix A of the CSER provides that Appendix A of the CSER may be terminated by Access Entity and Master Developer (as the parties to the only remaining agreement that incorporates Appendix A of the CSER).

D. WHEREAS, Access Entity and Master Developer now desire to rescind, revoke, cancel and terminate the CSER and Appendix A to the CSER.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

The CSER and Appendix A to the CSER are hereby rescinded, revoked, cancelled and terminated, and shall be of no further force or effect. Without limiting the generality of the foregoing, it is specifically agreed and provided that Access Entity shall no longer have any approval or other rights under any document that references the CSER or Access Entity's rights thereunder including, but not limited to, the following: (a) that certain Declaration of Covenants,

Conditions and Restrictions for Vistancia dated July 9, 2003, and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona (as amended), (b) that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A dated July 31, 2003, and recorded July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona (as amended), (c) that certain Declaration of Covenants, Conditions and Restrictions for Trilogy at Vistancia dated January 26, 2004, and recorded January 28, 2004, in Instrument No. 2004-0082577, and/or (d) any final subdivision plat, map of dedication, or map of private tract dedication that has been recorded as of the date hereof.

Nothing in this Termination is intended to affect or impair (and this Termination shall not affect or impair) in any way the easements and other rights granted by Access Entity pursuant to that certain Roadway and Public Utility dated _____, 2005 and recorded _____, 2005, as Instrument No. 2005-_____, official records of Maricopa County, Arizona.

This Termination (a) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns; (b) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Termination; and (c) shall be governed by and construed in accordance with the laws of the State of Arizona.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have executed this Termination as of the date first set forth above.

ACCESS ENTITY:

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"), which has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation. The undersigned hereby consents to the foregoing Termination of Common Services Easements and Restrictions.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
 Its: _____

STATE OF _____)
) ss.
 County of _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

 Notary Public

17805-1/1307030

WHEN RECORDED RETURN TO:

City of Peoria
8401 West Monroe Street
Peoria, AZ 85345
Attention: Stephen Kemp, City Attorney

TERMINATION OF MULTI-USE EASEMENTS AND INDEMNITY

This Termination of Multi-Use Easements and Indemnity (the "Termination") is made and entered into as of the ___ day of _____, 2005, by and between VISTANCIA COMMUNICATIONS, L.L.C., an Arizona liability company ("Access Entity"), VISTANCIA, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC) ("Master Developer"), and CITY OF PEORIA, ARIZONA, an Arizona chartered municipal corporation ("City").

RECITALS

A. WHEREAS, Access Entity, Master Developer and the City have previously entered into that certain Multi-Use Easements and Indemnity, dated July 2, 2003, and recorded July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI").

B. WHEREAS, Access Entity, Master Developer and the City now desire to terminate the MUEI.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

The MUEI is hereby terminated and shall be of no further force or effect.

This Termination (a) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns; (b) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Termination; and (c) shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties have executed this Termination as of the date first set forth above.

CITY:

CITY OF PEORIA, ARIZONA, an Arizona
chartered municipal corporation

ATTEST:

By:

John Keegan, Mayor

Mary Jo Kief, City Clerk

This Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

Stephen Kemp, City Attorney

ACCESS ENTITY:

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by John Keegan, as Mayor of the City of Peoria, Arizona, an Arizona chartered municipal corporation.

Notary Public

My commission expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"), which has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation. The undersigned hereby consents to the foregoing Termination of Multi-Use Easements and Indemnity.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

STATE OF _____)
County of _____) ss.

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

Notary Public

17805-1/1307026

WHEN RECORDED RETURN TO:

EXHIBIT "1C"

Vistancia, LLC
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

**TERMINATION OF NON-EXCLUSIVE LICENSE AGREEMENT
(re Property Access Agreement)**

This Termination of Non-Exclusive License Agreement (the "**Termination**") is made and entered into as of the ___ day of _____, 2005, by and between VISTANCIA COMMUNICATIONS, L.L.C., an Arizona liability company ("**Access Entity**") and COXCOM, INC., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its affiliates ("**Cox**").

RECITALS

A. WHEREAS, Access Entity and Cox have previously entered into that certain Non-Exclusive License Agreement dated as of December 31, 2003, and recorded March 2, 2004, in Instrument No. 2004-0212876, official records of Maricopa County, Arizona (the "**NELA**"), whereby (i) Access Entity licensed to Cox certain rights and easements held by Access Entity pursuant to that certain Common Services Easements and Restrictions entered into by Vistancia, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC) (the "**Master Developer**") and Access Entity, dated June 10, 2003, and recorded June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (the "**CSER**"), and (ii) certain obligations were imposed on Cox as required under that certain that certain Multi-Use Easements and Indemnity entered into by the Master Developer, the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "**City**") and Access Entity, dated July 2, 2003, and recorded July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "**MUEI**").

B. WHEREAS, the CSER has been terminated (or is being terminated concurrently with the recordation of this Termination) pursuant to that certain Termination of Common Services Easements and Restrictions dated _____, 2005, and recorded _____, 2005, in Instrument No. 2005-_____, official records of Maricopa County, Arizona.

C. WHEREAS, the MUEI has been terminated (or is being terminated concurrently with the recordation of this Termination) pursuant to that certain Termination of Multi-Use Easements and Indemnity dated _____, 2005, and recorded _____, 2005, in Instrument No. 2005-_____, official records of Maricopa County, Arizona.

D. WHEREAS, Access Entity and Cox now desire to rescind, revoke, cancel and terminate the NELA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

The NELA is hereby rescinded, revoked, cancelled and terminated, and shall be of no further force or effect.

This Termination (a) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns; (b) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Termination; and (c) shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties have executed this Termination as of the date first set forth above.

ACCESS ENTITY:

**VISTANCIA COMMUNICATIONS,
L.L.C., an Arizona limited liability company**

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

COX:

**COXCOM, INC., a Delaware corporation
d/b/a/ COX COMMUNICATIONS
PHOENIX**

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"), which has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation. The undersigned hereby consents to the foregoing Termination of Non-Exclusive License Agreement.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____

Its: _____

STATE OF _____)

) ss.

County of _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

Notary Public

17805-1/1307021

WHEN RECORDED RETURN TO:

EXHIBIT "1D"

Vistancia, LLC
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

**TERMINATION OF NON-EXCLUSIVE LICENSE AGREEMENT
(re Co-Marketing Agreement)**

This Termination of Non-Exclusive License Agreement (the "**Termination**") is made and entered into as of the ___ day of _____, 2005, by and between VISTANCIA COMMUNICATIONS, L.L.C., an Arizona liability company ("**Access Entity**") and COXCOM, INC., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its affiliates ("**Cox**").

RECITALS

A. WHEREAS, Access Entity and Cox have previously entered into that certain Non-Exclusive License Agreement dated as of December 31, 2003, and recorded March 2, 2004, in Instrument No. 2004-0212877, official records of Maricopa County, Arizona (the "**NELA**"), whereby (i) Access Entity licensed to Cox certain rights and easements held by Access Entity pursuant to that certain Common Services Easements and Restrictions entered into by Vistancia, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC) (the "**Master Developer**") and Access Entity, dated June 10, 2003, and recorded June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (the "**CSER**"), and (ii) certain obligations were imposed on Cox as required under that certain that certain Multi-Use Easements and Indemnity entered into by the Master Developer, the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "**City**") and Access Entity, dated July 2, 2003, and recorded July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "**MUEI**").

B. WHEREAS, the CSER has been terminated (or is being terminated concurrently with the recordation of this Termination) pursuant to that certain Termination of Common Services Easements and Restrictions dated _____, 2005, and recorded _____, 2005, in Instrument No. 2005-_____, official records of Maricopa County, Arizona.

C. WHEREAS, the MUEI has been terminated (or is being terminated concurrently with the recordation of this Termination) pursuant to that certain Termination of Multi-Use Easements and Indemnity dated _____, 2005, and recorded _____, 2005, in Instrument No. 2005-_____, official records of Maricopa County, Arizona.

D. WHEREAS, Access Entity and Cox now desire to rescind, revoke, cancel and terminate the NELA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

The NELA is hereby rescinded, revoked, cancelled and terminated, and shall be of no further force or effect.

This Termination (a) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns; (b) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Termination; and (c) shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties have executed this Termination as of the date first set forth above.

ACCESS ENTITY:

**VISTANCIA COMMUNICATIONS,
L.L.C., an Arizona limited liability company**

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors,
L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its
Chief Operating Officer

COX:

**COXCOM, INC., a Delaware corporation
d/b/a/ COX COMMUNICATIONS
PHOENIX**

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"), which has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation. The undersigned hereby consents to the foregoing Termination of Non-Exclusive License Agreement.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in _____ and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

Notary Public

17805-1/1307024

WHEN RECORDED RETURN TO:

EXHIBIT "1E"

Vistancia, LLC
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

ROADWAY AND UTILITY EASEMENT

This Roadway and Utility Easement (the "**Easement**") is made and entered into as of the ___ day of _____, 2005, by and between **VISTANCIA COMMUNICATIONS, L.L.C.**, an Arizona liability company (the "**Access Entity**") and **VISTANCIA, LLC**, a Delaware limited liability company (the "**Master Developer**").

RECITALS

A. WHEREAS, defined terms appear in this Easement with the first letter of each word in the term capitalized. Unless otherwise defined herein, defined terms shall have the meanings as set forth in **Exhibit A** attached hereto and incorporated herein.

B. WHEREAS, the Master Developer is the master developer of the planned community located within the City of Peoria, Arizona (the "**City**"), known as "Vistancia" (the "**Project**"). In connection with its development of the Project, as of the date hereof the Master Developer has caused to be recorded (or consented to the recordation of) those final subdivision plats, maps of private tract dedication, and maps of dedication as described in **Exhibit B** attached hereto and incorporated herein (the "**Existing Plats and Maps**").

C. WHEREAS, the Access Entity and the Master Developer have previously entered into that certain Common Services Easements and Restrictions, dated June 10, 2003, and recorded June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (the "**CSER**"), which, among other things, gives the Access Entity the exclusive right to (1) identify and contract with Communication Service Providers to provide or otherwise make available Communication Services within all or a portion of the In Gross Easement Area, and (2) determine who may locate communication Facilities within Service Easement Areas. As of the date hereof, the In Gross Easement Area does not include any property located outside the boundaries of the property described in the Existing Plats and Maps, and no Service Easement Areas have been created outside the boundaries of the property described in the Existing Plats and Maps.

D. WHEREAS, certain areas have been designated on the Existing Plats and Maps as "Multi-Use Easement," "M.U.E." or "MUE" (all areas on the Existing Plats and Maps that have been designated as "Multi-Use Easement," "M.U.E." or "MUE" being hereinafter collectively referred to as the "**MUE Areas**").

E. WHEREAS, pursuant to the Existing Plats and Maps, public utility easements have been dedicated over the MUE Areas for all utilities *other than* Communication Services. The Existing Plats and Maps reserve to the Access Entity all easements and other rights with respect to Communication Services and facilities within the MUE Areas, and indicate that such easements and rights are to be granted in the sole and absolute discretion of the Access Entity, by one or more separate instruments recorded by the Access Entity in accordance with the CSER.

F. WHEREAS, in accordance with the CSER and as contemplated by the reservation in the Existing Plats and Maps described in Recital E above, the Access Entity now desires to grant a public utility easement for Communication Services over the MUE Areas, in accordance with and as hereinafter provided in this Easement. It is intended that the grant of such public utility easement for Communication Services will thereby convert the existing utility easements within the MUE Areas to full, conventional public utilities easements (PUEs), due to the fact that the Existing Plats and Maps already create public utility easements for all utilities other than Communication Services and this Easement will complete the previously missing grant of public utility easements for Communication Services.

G. WHEREAS, certain of the MUE Areas are located within Tracts contained on the Existing Plats and Maps that are located adjacent to collector and arterial streets (as opposed to local streets), which Tracts are described in Exhibit C attached hereto and incorporated herein (the "Roadway Tracts"). The Master Developer is the current owner of fee title to the Roadway Tracts, and now desires to grant to the City a roadway easement over the Roadway Tracts, in accordance with and as hereinafter provided in this Easement. Vistancia Maintenance Corporation (the entity to whom the Roadway Tracts will ultimately be conveyed, as set forth on the Existing Plats and Maps) has consented to the foregoing grant, as evidenced by its consent attached hereto and incorporated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Grant of Communication Services Easement. The Access Entity hereby grants to the City, its successors and assigns, a permanent and perpetual utilities easement to access and enter upon, over, across, and under the surface of the MUE Areas for purposes of Communication Services and Facilities, and access, construction, maintenance, operation and replacement associated therewith (the "Communication Services Easement"), to have and to hold the said Communication Services Easement unto the City of Peoria, and unto its successors and assigns forever, together with the right (at the City of Peoria's discretion) to allow other utilities to utilize such Communication Services Easement. The Communication Services Easement shall be subject to the following:

- a. All Facilities shall be installed underground.
- b. Any construction within any MUE Area that is located within a Roadway Tract shall be subject to the City's approval and compliance with all applicable City requirements, including, but not limited to, the issuance prior to construction of applicable City permits for the construction and installation of facilities.

c. The Access Entity hereby covenants that it is lawfully seized and possessed of all rights necessary to grant the Communication Services Easement as set forth herein, and that it will warrant the title and quiet possession thereto against the lawful claim of all persons.

d. The Communication Services Easement includes the right to cut back and trim such portion of the branches and tops of trees now growing or that may hereafter grow upon the MUE Areas, as may extend over the MUE Areas, so as to prevent the same from interfering with the efficient use of the Communication Services Easement.

e. Anyone using any MUE Area under the foregoing grant of easement set forth in this paragraph 1 shall repair and restore all improvements within the MUE Area damaged by such use. Notwithstanding the foregoing, the City shall not be responsible for replacing any landscaping or any improvement placed in the MUE Areas.

f. Since the Existing Plats and Maps dedicate public utility easements over the MUE Areas for all utilities other than Communication Services, and since this paragraph 1 grants an easement to the public over the MUE Areas for Communication Services, it is the intent of the Access Entity and the Master Developer that this Easement and the Existing Plats and Maps, taken together, shall create public utility easements over the MUE Areas for all utilities on the terms contained therein.

2. Grant of Roadway Easement. The Master Developer hereby grants to the City, its successors and assigns, a permanent, perpetual and exclusive roadway easement to access and enter upon, over, across, and under the surface of the Roadway Tracts for purposes of access, construction, maintenance, operation and replacement of roadway improvements (the "Roadway Easement"). The Roadway Easement shall be subject to the following:

a. The Master Developer hereby covenants that it has lawfully seized and possessed of the Roadway Tracts, that it has good and lawful right to grant the Roadway Easement; and that it will warrant the title and quiet possession thereto against the lawful claim of all persons.

b. The Roadway Easement includes the right to cut back and trim such portion of the branches and tops of trees now growing or that may hereafter grow upon the Roadway Tracts, as may extend over the Roadway Tracts, so as to prevent the same from interfering with the efficient use of the Roadway Easement.

c. The City shall not be responsible for replacing any landscaping or any improvement placed in the Roadway Tracts by the Master Developer or its successors or assigns.

3. Abandonment. In the event the Communication Services Easement and/or the Roadway Easement herein granted shall be abandoned and permanently cease to be used for the purposes herein granted all rights herein granted shall cease and revert to the owner of the land upon which such Easement is located.

4. Runs with the Land. This Easement shall run with the land and shall be binding upon the Master Developer, the Access Entity, and their respective heirs, successors and assigns.

5. Miscellaneous. This Easement (a) may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; and (b) shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the undersigned parties have executed this Easement as of the date first set forth above.

ACCESS ENTITY:

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

CITY ACCEPTANCE PAGE

The Mayor and Council accept the aforementioned dedicated Roadway and Utility Easement.

The City Clerk shall record the original of this Roadway and Utility Easement with the Maricopa County Recorder's office.

Accepted by the Mayor and Council of the City of Peoria, Arizona this _____ day of _____, 2005.

CITY OF PEORIA, ARIZONA, an Arizona
municipal corporation

John C. Keegan, Mayor

ATTEST:

Mary Jo Kief, City Clerk

VISTANCIA MAINTENANCE CORPORATION CONSENT

The undersigned hereby consents to the foregoing Roadway and Utility Easement.

VISTANCIA MAINTENANCE CORPORATION, an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of Vistancia Maintenance Corporation, an Arizona non-profit corporation, on behalf thereof.

Notary Public

My Commission Expires:

VILLAGE ASSOCIATION CONSENT

The undersigned hereby consents to the foregoing Roadway and Utility Easement.

VISTANCIA VILLAGE A COMMUNITY ASSOCIATION, an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by _____, the _____ of Vistancia Village A Community Association, an Arizona non-profit corporation, on behalf thereof.

Notary Public

My Commission Expires:

VILLAGE ASSOCIATION CONSENT

The undersigned hereby consents to the foregoing Roadway and Utility Easement.

TRILOGY AT VISTANCIA COMMUNITY ASSOCIATION, an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by _____, the _____ of Trilogy at Vistancia Community Association, an Arizona non-profit corporation, on behalf thereof.

Notary Public

My Commission Expires:

17805-1/1307019

EXHIBIT A

Definitions

Section 1.01 "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, member, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.02 "Association" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

Section 1.03 "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Section 1.04 "Combined Easement Area" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.

Section 1.05 "Communication Service Provider" shall mean and refer to any third party provider of one or more Communication Services, which may include a combination of Persons, such that one (1) or more of the Communication Services are available within the Development.

Section 1.06 "Communication Services" shall mean and refer to any one or more of the following: Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication services or utilities, together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.07 "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.08 "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Section 1.09 "Development" shall mean and refer to the real property described in Exhibit A of the CSER, together with the real property that has been annexed thereto pursuant to an "Exhibit A-Supplement" contained in any Supplement to Common Services Easements and

Restrictions that has been recorded as of the date hereof in accordance with Section 1.13 of Appendix A to the CSER. Although the term "Development" may be more broadly defined in the original CSER, the real property described above in this Section 1.09 constitutes all of the real property that has been included within the definition of "Development" under the CSER as of the date of this Easement.

Section 1.10 "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology used primarily in the In Gross Easement Area will be an Excluded Device only to the extent required by law to be permitted (*E.g.* Section 207 of the Telecommunications Act of 1996 and 47 C.F.R. 1.4000) or to the extent authorized by the Declarations. Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

Section 1.11 "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Communication Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manholes, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Communication Services, including, without limitation, communication, video, data, e-commerce, Internet, community intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used.

Section 1.12 "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.13 "In Gross Easement Area" shall mean and refer to the real property described in Exhibit B of the CSER, together with the real property that has been annexed thereto pursuant to an "Exhibit B-Supplement" contained in any Supplement to Common Services Easements and Restrictions that has been recorded as of the date hereof in accordance with Section 1.18 of Appendix A to the CSER. Although the term "In Gross Easement Area" may be more broadly defined in the original CSER, the real property described above in this **Section 1.13** constitutes all of the real property that has been included within the definition of "In Gross Easement Area" under the CSER as of the date of this Easement.

Section 1.14 "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.15 "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia, dated July 9, 2003, and recorded July 9, 2003, in Instrument No. 2003-0898772, Official Records of Maricopa County, Arizona, as amended from time to time, which, among other things, provides for the organization of Vistancia Maintenance Corporation.

Section 1.16 "Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a platted lot, a development parcel or any other land within the Development, or their lessees, tenants or any other successors in interest.

Section 1.17 "Owner Access Area" shall mean and refer to the area reasonably necessary for Communication Service Providers to establish Communication Services to an Owner's residential structure, building or other structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure (or building or other structure, as applicable) and upon and within the residential structure (or building or other structure, as applicable) as contemplated by the design for the initial construction thereof, as thereafter modified from time to time.

Section 1.18 "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.19 "Plats" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time. The Existing Plats and Maps described in **Exhibit B** of this Easement constitute all of the Plats (as defined in this **Section 1.19**) that have been recorded as of the date of this Easement.

Section 1.20 "**Platted Easement Area**" shall mean and refer to all of the easement areas designated as "Multi-Use Easement," "M.U.E." or "MUE" on the Existing Plats and Maps.

Section 1.21 "**Security Monitoring Services**" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Communication Service Provider may enter into a third party contract (*e.g.*, a monitoring contract) with a security monitoring company.

Section 1.22 "**Service Easement Area**" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:

- (a) All of the Platted Easement Area.
- (b) All of the Owner Access Area.
- (c) Each street or roadway created by a Plat that is private (as opposed to public) in nature and is owned (or is to be owned, pursuant to the terms of such Plat) by Vistancia Maintenance Corporation, any Association, or any other homeowners' or property owners' association established pursuant to a Declaration.
- (d) Those portions of the tracts and other areas constituting common areas (however denominated) under any of the Declarations (other than the private streets and private roadways described in subsection (c) above, which shall be governed by that subsection rather than this subsection (d)), to the extent reasonably necessary for the establishment of Communication Services and Facilities to serve the Owners.

Section 1.23 "**Telephone Services (local)**" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.24 "**Telephone Services (long distance)**" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.25 "**Village Declaration**" shall mean and refer to each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

Section 1.26 "**Vistancia Maintenance Corporation**" shall mean and refer to Vistancia Maintenance Corporation, an Arizona non-profit corporation (which is the Arizona non-profit corporation to be organized pursuant to the Master Declaration), its successors and assigns.

EXHIBIT B

Existing Plats and Maps

All of the following, as amended or corrected pursuant to any recorded Certificate of Correction or other recorded instrument of correction or amendment:

Title	Recording Information (Official Records of Maricopa County)
Final Plat of Vistancia Village A Parcel A1	Book 719 of Maps, page 31
Final Plat of Vistancia Village A Parcel A7	Book 719 of Maps, page 33
Final Plat for Vistancia Village A Parcel A8	Book 719 of Maps, page 30
Final Plat of Vistancia Village A Parcel A9	Book 718 of Maps, page 46
Final Plat of Vistancia Village A Parcel A10A	Book 655 of Maps, page 33
Final Plat of Vistancia Village A Parcel A10B	Book 657 of Maps, page 34
Final Plat of Vistancia Village A Parcel A12	Book 655 of Maps, page 32
Final Plat of Vistancia Village A Parcel A13	Book 655 of Maps, page 31
Final Plat of Vistancia Village A Parcel A14	Book 661 of Maps, page 25
Final Plat for Vistancia Village A Parcel A15	Book 719 of Maps, page 27
Final Plat of Vistancia Village A Parcel A19	Book 656 of Maps, page 39
Final Plat of Vistancia Village A Parcel A20	Book 656 of Maps, page 3
Final Plat of Vistancia Village A Parcel A30	Book 647 of Maps, page 41
Resubdivision of Lots 1, 2 and 3 of Vistancia Village A Parcel A30	Book 731 of Maps, page 8
Final Plat of Vistancia Village A Parcel A32	Book 655 of Maps, page 34
Final Plat of Vistancia Village A Parcel A33	Book 655 of Maps, page 29
Final Plat of Vistancia Village A Parcel A36	Book 655 of Maps, page 30
Final Plat of Vistancia Village A Parcel A37	Book 662 of Maps, page 26
Final Plat of Vistancia Village A Parcel A38	Book 719 of Maps, page 19
Final Plat for Vistancia Village A Parcel G4	Book 719 of Maps, page 29
Final Plat of Vistancia Village A Parcel G5	Book 718 of Maps, page 48
Final Plat of Vistancia Village A Parcel G10	Book 719 of Maps, page 50

Title	Recording Information (Official Records of Maricopa County)
Final Plat of Vistancia Village A Parcel G11	Book 720 of Maps, page 1
Final Plat of Vistancia Village B Parcel B2	Book 767 of Maps, page 49
Final Plat of Vistancia Village B Parcel B8	Book 768 of Maps, page 27
Final Plat of Vistancia Village B Parcel B10	Book 767 of Maps, page 48
Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19	Book 655 of Maps, page 35
Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21	Book 647 of Maps, page 30
Final Plat for Trilogy at Vistancia Parcel C28	Book 750 of Maps, page 34
Final Plat for Trilogy at Vistancia Parcel C30-Phase 1	Book 728 of Maps, page 42
Final Plat for Trilogy at Vistancia Parcel C30-Phase 2	Book 728 of Maps, page 43
Final Plat for Desert Sky at Trilogy at Vistancia Parcel C31	Book 664 of Maps, page 1
Final Plat for Trilogy at Vistancia Parcel C33	Book 707 of Maps, page 39
Final Plat for Trilogy at Vistancia Parcel C34	Book 706 of Maps, page 21
Map of Dedication for Vistancia – Phase 1A	Book 647 of Maps, page 31
Map of Dedication El Mirage Road, Ridgeline Road, & Westward Skies Drive	Book 719 of Maps, page 34
Map of Dedication Vistancia Boulevard, Lone Mountain Road, Creosote Drive & Westland Road	Book 721 of Maps, page 11
Map of Dedication Vistancia Boulevard & Sunrise Point	Book 718 of Maps, page 47
Map of Private Tract Dedication for Trilogy Boulevard at Vistancia	Book 664 of Maps, page 7
Map of Dedication for Lone Mountain Road	Book 744 of Maps, page 25
Final Plat of Blackstone at Vistancia Parcel F-7A	Book 777 of Maps, page 16
Final Plat of Blackstone at Vistancia Parcel F-7B	Book 780 of Maps, page 1
Map of Private Tract Dedication for Blackstone Drive and Sunrise Point	Book 768 of Maps, page 42
Final Plat for Trilogy at Vistancia Parcel C22	Book 776 of Maps, page 18

**[UPDATE THIS SCHEDULE PRIOR TO RECORDING,
TO INCLUDE ALL PLATS AND MODs RECORDED AFTER 10/20/2005]**

EXHIBIT C

Roadway Tracts

All Tracts on the Existing Plats and Maps which are designated on the Existing Plats and Maps as containing a Dry Utility Corridor (DUC) within and MUE Area and all Tracts on the Existing Plats and Maps that are located contiguous to Jomax Road, El Mirage Road, Vistancia Boulevard, Town Center, Sunrise Point, Sunset Point, Whispering Ridge Road, Ridgeline Road, Westward Skies Drive, Westland Drive, or Blackstone Drive, including, but not limited to, the following Tracts:

Plat/Map¹	Roadway Tracts
Final Plat for Trilogy at Vistancia Parcel C34, recorded in Book 706, Page 21, Official Records of Maricopa County, Arizona	Tracts H and I
Map of Dedication for Vistancia – Phase 1A, recorded in Book 647 of Maps, Page 31, Official Records of Maricopa County, Arizona	Tracts D, E, G, H, I, J, T, U, V, W, X, Y, Z, AA, EE, GG, HH, II, and LL
Map of Dedication El Mirage Road, Ridgeline Road, & Westward Skies Drive, recorded in Book 719 of Maps, Page 34, Official Records of Maricopa County, Arizona	Tracts A, B, C, D, E, F and G
Map of Dedication Vistancia Boulevard, Lone Mountain Road, Creosote Drive & Westland Road, recorded in Book 721 of Maps, Page 11, Official Records of Maricopa County, Arizona	Tracts A, B, C, D, E, F, G, H, J, K, L, M and N
Map of Dedication Vistancia Boulevard & Sunrise Point, recorded in Book 718 of Maps, Page 47, Official Records of Maricopa County, Arizona	Tracts A, B, C, D, E, F, G, H, I and J
Map of Dedication Blackstone Drive & Sunrise Point, recorded in Book 768 of Maps, Page 42, Official Records of Maricopa County, Arizona	Tracts A, B, C, D, E, F, H, I and J
Map of Dedication for Lone Mountain Road, recorded in Book 744 of Maps, Page 25, Official Records of Maricopa County, Arizona	Tracts A through L, inclusive, and Tracts N through V, inclusive
Map of Private Tract Dedication for Blackstone Drive and Sunrise Point, recorded in Book 768 of Maps, Page 42, Official Records of Maricopa County, Arizona	Tracts B, C, D, E, F, G, H, I, J, K, L, and M

¹ All references any Final Plat or Map of Dedication in the chart above shall include all corrections or amendments thereto as set forth in any recorded Certificate of Correction or other recorded instrument of correction or amendment

[UPDATE THIS SCHEDULE PRIOR TO RECORDING,
TO INCLUDE ALL PLATS AND MODs RECORDED AFTER 9/7/2005]

When recorded, return to:

Storey & Burnham PLC
3030 E. Camelback Road, Suite 265
Phoenix, Arizona 85016
Attn: Lesa J. Storey

EXHIBIT "1F"

**SECOND CERTIFICATE OF AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VISTANCIA**

RECITALS:

WHEREAS, Vistancia, LLC, a Delaware limited liability company ("**Declarant**"), executed and caused to be Recorded on July 9, 2003, that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003, in Instrument No. 2003-0898772 (as the same may be amended from time to time, the "**Declaration**"); and

WHEREAS, that certain Common Services Easements and Restrictions dated June 10, 2003, and Recorded on June 27, 2003, in Instrument No. 2003-0837106, as amended, has been terminated of record (or is being terminated of record concurrently with the recordation of this Second Certificate of Amendment); and

WHEREAS, initially capitalized terms used but not otherwise defined herein shall have the meanings attributed to them in the Declaration; and

WHEREAS, Declarant desires to amend the Declaration in those respects set forth below (the "**Amendment**"), pursuant to Section 11.2 of the Declaration; and

WHEREAS, the required percentage of the Members of Vistancia Maintenance Corporation, an Arizona non-profit corporation (the "**Corporation**"), has approved the adoption of the Amendment in accordance with Section 11.2 of the Declaration.

AMENDMENT:

NOW THEREFORE, the Declaration is hereby amended as follows:

1. All references to the following terms in the Declaration, and all provisions of the Declaration specifically related thereto, are hereby deleted: "CSER"; "Access Entity"; "Communication Service Provider(s)"; "Communication Services"; "Facilities"; "Utility Services"; "Service Easement Area"; and "Article XV" (collectively, the "**Deleted Terms and Provisions**").

2. Without limiting the generality of *Section 1* above, the following words and provisions of the Declaration are hereby deleted therefrom:

2.1. in Section 3.1 of the Declaration:

(i) in the 8th and 9th lines, the words "subject to and limited by the grant of certain rights to the Access Entity pursuant to the CSER (as such terms are defined in Article XV)";

(ii) in the 10th line, the words "and/or the Access Entity";

(iii) in the 18th and 19th lines, the words "Service Easement Areas (as defined in the CSER)";

(iv) in the 21st and 22nd lines, the words "subject to and limited by the grant of certain rights to the Access Entity pursuant to the CSER";

(v) in the 24th and 25th lines, the words "except as otherwise provided in the CSER";

2.2 in the 29th through 31st lines of Section 7.2 of the Declaration, the words "and shall also be subject and subordinate to the CSER and the rights of the Access Entity and of any Communication Service Provider (defined in Article XV) arising thereunder";

2.3 in the last line of Section 8.1 of the Declaration, the words "subject to and limited by the CSER";

2.4 in the 15th line of Section 9.1 of the Declaration, the words "(but subject to any limitations on the following actions imposed by the CSER)";

2.5 in the 9th line of Section 10.1 of the Declaration, the words "or the CSER";

2.6 the last sentence of Section 10.2 of the Declaration, in its entirety;

2.7 in the 1st line of Section 10.3 of the Declaration, the words "Subject to and as limited by the CSER";

2.8 in the last line of Section 10.4 of the Declaration, the words "and with the CSER";

2.9 in the 19th and 20th lines of subsection (a) of Section 10.5 of the Declaration, the words "and shall be subject to the CSER and the rights of the Access Entity and of any Communication Service Provider arising therefrom";

2.10 in Section 10.6 of the Declaration:

- (i) the first sentence, in its entirety;
- (ii) in the 15th and 16th lines of subsection (a), the words "(other than Facilities, as defined in the CSER and referenced in Article XV hereof)";
- (iii) in the 17th and 18th lines of subsection (a), the words "(other than Communication Services (as defined in the CSER and referenced in Article XV below) and Facilities)";
- (iv) in the 6th and 7th lines of subsection (b), the words "(other than Communication Services and Facilities)";
- (v) in the 3rd line of subsection (d), the words "(other than Communication Services)";
- (vi) in the 9th and 10th lines of subsection (d), the words "other than Communication Services and Facilities";
- (vii) in the 14th line of subsection (d), the words "(other than Facilities)";
- (viii) in the 17th and 18th lines of subsection (d), the words "(other than those relating to Communication Services)";
- (ix) in the 20th line of subsection (d), the words "(other than Communication Services)";
- (x) in the 21st through 24th lines of subsection (d), the words "The Access Entity has the exclusive right, pursuant to the CSER, to identify and contract with Communication Service Providers for Communication Services and Facilities, and the rights and easements benefiting the Access Entity and any Communication Service Provider are set forth in the CSER";
- (xi) in the 9th line of subsection (e), the words "(other than Facilities)";
- (xii) in the 11th line of subsection (e), the words "(other than with respect to Communication Services and Facilities)";
- (xiii) in the 23rd line of subsection (e), the words "but excluding Facilities)";
- (xiv) in the 24th line of subsection (e), the words "(other than Communication Services and Facilities)";
- (xv) in the 25th through 29th lines of subsection (e), the words "The Access Entity has the exclusive right, pursuant to the CSER, to identify and

contract with Communication Service Providers for Communication Services and Facilities, and the rights and easements benefiting the Access Entity and any Communication Service Provider are set forth in the CSER";

(xvi) in the 2nd and 3rd lines of subsection (g), the words "the CSER and the rights of the Access Entity and of any Communication Service Provider arising therefrom";

2.11 in the last four lines of Section 11.2 of the Declaration, the words "and finally, any amendment purporting to affect the priority or applicability of the CSER shall require the joinder of the Declarant and the then holder of the rights and interests of the grantee under the CSER";

2.12 in the 6th and 7th lines of Section 13.1 of the Declaration, the words "and may be concurrently annexed and subjected to the CSER in accordance with the terms of the CSER";

2.13 in the 5th line of Section 13.2 of the Declaration, the words "and the CSER";

2.14 in the 30th through 32nd lines of Section 14.1 of the Declaration, the words "and shall be subject to the CSER and the rights of the Access Entity and of any Communication Service Provider arising therefrom";

2.15 Article XV of the Declaration, in its entirety; and

2.16 The Access Entity Consent attached to the Declaration, in its entirety.

3. To the extent that the Declaration requires that any of the Deleted Terms and Provisions be referenced or included in a Village Declaration, such requirements are hereby deleted from the Declaration. To the extent that any of the Deleted Terms and Provisions (or provisions substantially equivalent thereto) were included or incorporated by reference in any Village Declaration, such Deleted Terms and Provisions (and such substantially equivalent provisions) shall be of no further force or effect and shall be deemed deleted from any Village Declaration Recorded pursuant to the Declaration.

[NO FURTHER TEXT ON THIS PAGE]

CERTIFICATION:

The undersigned, as the duly elected President of the Corporation, hereby certifies that the Members of the Corporation casting seventy-five percent (75%) of the total votes entitled to be cast by the Membership at the time, voted affirmatively for the adoption of the Amendment pursuant to a written consent as authorized by Section 3.4(f) of the Bylaws of the Corporation and by A.R.S. Section 10-3704.

This Second Certificate of Amendment is made this ____ day of _____, 2005.

Mark Hammons
President, Vistancia Maintenance
Corporation, an Arizona non-profit
corporation

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Mark Hammons, the President of Vistancia Maintenance Corporation, an Arizona non-profit corporation, on behalf thereof.

Notary Public

My Commission Expires:

ATTEST:

I, the undersigned, do hereby attest:

That I am the duly elected and acting Secretary of Vistancia Maintenance Corporation, an Arizona nonprofit corporation; and

That the foregoing Second Certificate of Amendment constitutes the Second Certificate of Amendment as duly adopted by act of the Members of Vistancia Maintenance Corporation, an Arizona non-profit corporation, pursuant to the Declaration.

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 2005.

Sandy Esmay
Secretary, Vistancia Maintenance
Corporation, an Arizona non-profit
corporation

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Sandy Esmay, the Secretary of Vistancia Maintenance Corporation, an Arizona non-profit corporation, on behalf thereof.

Notary Public

My Commission Expires:

VISTANCIA DECLARANT CONSENT

VISTANCIA, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), in its capacity as the Declarant under the Declaration, hereby approves of the form and content of the foregoing Second Certificate of Amendment and consents to the amendment of the Declaration set forth therein.

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, as General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member of Vistancia, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

ACCESS ENTITY CONSENT

The undersigned is the grantee ("Access Entity") named in that certain Common Services Easements and Restrictions dated June 10, 2003, and recorded on June 27, 2003, in Instrument No. 2003-0837106, Official Records of Maricopa County, Arizona (as amended, the "CSER"), which CSER has been terminated of record (or is being terminated of record concurrently with the recordation of the foregoing Second Certificate of Amendment). The undersigned hereby acknowledges its consent to the amendment of the Declaration as set forth in the foregoing Second Certificate of Amendment.

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

17805-1/1307028

CONSENT TO ACTIONS IN LIEU
OF A MEMBERS' MEETING
OF
VISTANCIA MAINTENANCE CORPORATION,
an Arizona non-profit corporation

EXHIBIT "1G"

WHEREAS, VISTANCIA, LLC, a Delaware limited liability company ("**Vistancia**") is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003, recorded July 9, 2003, in Instrument No. 2003-0898772, Official Records of Maricopa County, Arizona (the "**Declaration**"); and

WHEREAS, initially capitalized words used but not otherwise defined herein shall have the meanings attributed to them in the Declaration;

WHEREAS, pursuant to Section 5.1(b) and Section 5.2 of the Declaration, Vistancia holds seventy-five percent (75%) of the Memberships and of the Membership votes in Vistancia Maintenance Corporation, an Arizona non-profit corporation (the "**Corporation**");

WHEREAS, pursuant to Section 11.2 of the Declaration, the Declaration may be amended by Recording a Certificate of Amendment, duly signed, attested and acknowledged in accordance with such Section, setting forth in full the amendment adopted by Members casting at least seventy-five percent (75%) of the total votes entitled to be cast by the Membership at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Corporation; and

WHEREAS, pursuant to Section 3.4(f) of the Bylaws, the Members may approve any action which requires the Members' approval pursuant to the Declaration, the Articles, the Bylaws or applicable law, without a special meeting of Members, if the action is approved by written consents (describing the action and delivered to the Secretary of the Corporation for inclusion in the Corporation records) signed by Members holding at least the required percentage of the total authorized Membership votes required for such action;

WHEREAS, pursuant to A.R.S. Section 10-3704, the members of a non-profit corporation may approve any action that requires the members' approval without a meeting of members, if the action is evidenced by one or more written consents;

RESOLVED, that Vistancia, as the holder of seventy-five percent (75%) of the total authorized Membership votes in the Corporation, hereby casts its affirmative vote for adoption of the amendment to the Declaration set forth in the Second Certificate of Amendment attached hereto as Exhibit A and incorporated herein, on this the ___ day of _____, 2005.

[Signature appears on following page]

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

17805-1/1307029

EXHIBIT A
(see attached)

WHEN RECORDED RETURN TO:

Vistancia Communications, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

EXHIBIT "2"

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2005

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona limited liability company

State of Organization: Arizona

Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

"Master Developer" Corporate/Company Name: Vistancia LLC, a Delaware limited liability company

State of Organization: Delaware

Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

"Licensee" Corporate/Company Name: Accipiter Communications, Inc., a Nevada corporation

State of Organization: Nevada

Address: 2238 West Lone Cactus Drive
Suite 100
Phoenix, Arizona 85027

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor, Master Developer, and Licensee. Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions dated June 10, 2003 and recorded on June 27, 2003, in

Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", "Licensor," "Master Developer," and "Licensee" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

Section 1.01 WHEREAS, Licensor is the "Grantee" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.02 WHEREAS, Master Developer is the "Grantor" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.03 WHEREAS, for good and valuable consideration, Licensor and Master Developer desire to grant Licensee, its grantees, successors and permitted assigns a [temporary][perpetual] license for the use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License.

Section 1.04 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.05 WHEREAS, Licensor and Master Developer desire to and are attempting to convert all of the Service Easement Area to public utility easements ("PUEs") and otherwise terminate the CSER and MUEI, but [have not yet completed such conversion and termination, which is currently in process in conjunction with the City.][have been unable to do so because the City has declined to take the actions to affect such conversion and termination.]

Section 1.06 WHEREAS, Licensor and Master Developer desire to authorize Licensee to install, own and maintain Facilities within the Service Easement Area, to the same extent as if the Service Easement Area were PUEs held by the City, and without any restrictions other than would apply if the Service Easement Area were in fact PUEs held by the City, including but not limited to payment of applicable franchise and license fees to the City.

Section 1.07 WHEREAS, Licensee wishes to accept from Licensor and Master Developer the license as set forth below, subject to the terms and limitations of this License; and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article IV below.

Section 1.08 WHEREAS, this License is a private right of contract and a grant of a private license between Licensor, Master Developer and Licensee, and is not a grant of a public easement.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are by this License acknowledged, the Parties to this License agree as follows:

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor and Master Developer hereby declare, create, transfer, assign, grant and convey unto Licensee, its grantees, successors and permitted assigns, the non-exclusive right, privilege and license (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Communication Services within the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Communication Services or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder.

Section 2.02 Term. This License shall [continue until the recordation of that certain Roadway and Utility Easement ("RUE") by and between Licensor and Master Developer. Upon the date of recordation of the RUE, this License, without any further action by the Parties, shall automatically terminate and no longer be of any force and effect][be irrevocable and shall continue perpetually] (the "Term").

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Communication Service Provider.

Section 2.04 Use of Easement. This License shall be for the private, personal and exclusive use and benefit of Licensee and its grantees, licensees, lessees, franchisees, successors and permitted assigns who have been identified by and contracted with the Licensee to own, install, repair, relocate, expand, or otherwise service the Facilities in the Service Easement Area.

Section 2.05 Title and Authority. Licensor and Master Developer both represent, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantee" under the CSER, (b) Master Developer is the "Grantor" under the CSER, (c) Licensor has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, (d) Master Developer has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, (e) the individual executing this License on behalf of the Licensor has the authority to so execute this License, and (f) the individual executing this License on behalf of the Master Developer has the authority to so execute this License.

Section 2.06 Chain of Title. This License is conveyed to the Licensee, its grantees, successors and assigns, to have and to hold, so long as the rights, privileges and interests (licenses and easements) herein granted shall be used for the express purposes and upon the terms and conditions specified herein, but shall be subject to all liens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor, Master Developer, and Licensee hereby covenant and agree that the license granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and permitted assigns of each of the respective Parties hereto.

ARTICLE III - INDEMNIFICATION AND RIGHT TO DEFEND

Section 3.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any third party action, suit or proceeding or any third party claim asserted), to which the Indemnitees may become subject as a result of any failure by Licensee to satisfy its obligations under this License and/or any applicable law, regulation or governmental requirement; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 3.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE IV - AGREEMENTS BENEFITING THE CITY

Section 4.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under this License to provide Communication Services and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 4.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEL, to convert the MUEs (as such term is defined in the MUEL) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEL. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 4.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE V - NOTICES

Section 5.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United States mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, telecopy or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 5.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 5.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 5.03 Delivery Information. The information for notice to the Licensor, Master Developer, and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 5.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other Party.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability
company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its
Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

LICENSEE

ACCIPITER COMMUNICATIONS
INCORPORATED, a Nevada corporation

By: _____
Its: _____

MASTER DEVELOPER

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

Schedule: 1.01 Other Easements or Licenses (See Attached)

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Accipiter Communications Incorporated, a Nevada corporation, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"), which has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation. Subject to the continuing and prior lien of the Deed of Trust and the rights and interests of the undersigned in the Loan Documents (as defined in the Deed of Trust), including without limitation, that certain Assignment of Construction Agreements and Development Items dated December 23, 2002 made by Vistancia, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), for the benefit of the undersigned, the undersigned hereby consents to the foregoing Non-Exclusive License Agreement (the "License"); provided, however, that subject to the terms and conditions of that certain Assignment of Common Services Easements and Restrictions dated June 27, 2003 made by Vistancia Communications, L.L.C., an Arizona limited liability company, for the benefit of the undersigned, the undersigned agrees that the License shall continue in full force and effect, even in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the real property covered by such Deed of Trust.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____

Its: _____

STATE OF _____)
) ss.
 County of _____)

On this ____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

 Notary Public

SCHEDULE 1.01

Other Easements or Licenses

Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003.

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, dated December 31, 2003, and recorded on March 2, 2004, in Instrument No. 2004-0212876, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, dated December 31, 2003, and recorded on March 2, 2004, in Instrument No. 2004-0212877, official records of Maricopa County, Arizona.

Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions and Restrictions for Trilogy Village at Vistancia, recorded on January 28, 2004, in Instrument No. 2004-0082577, as amended by a First Amendment thereto recorded on March 16, 2004, in Instrument No. 2004-0267881, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions, and Restrictions for Vistancia, recorded on July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona.

Existing Plats and Maps

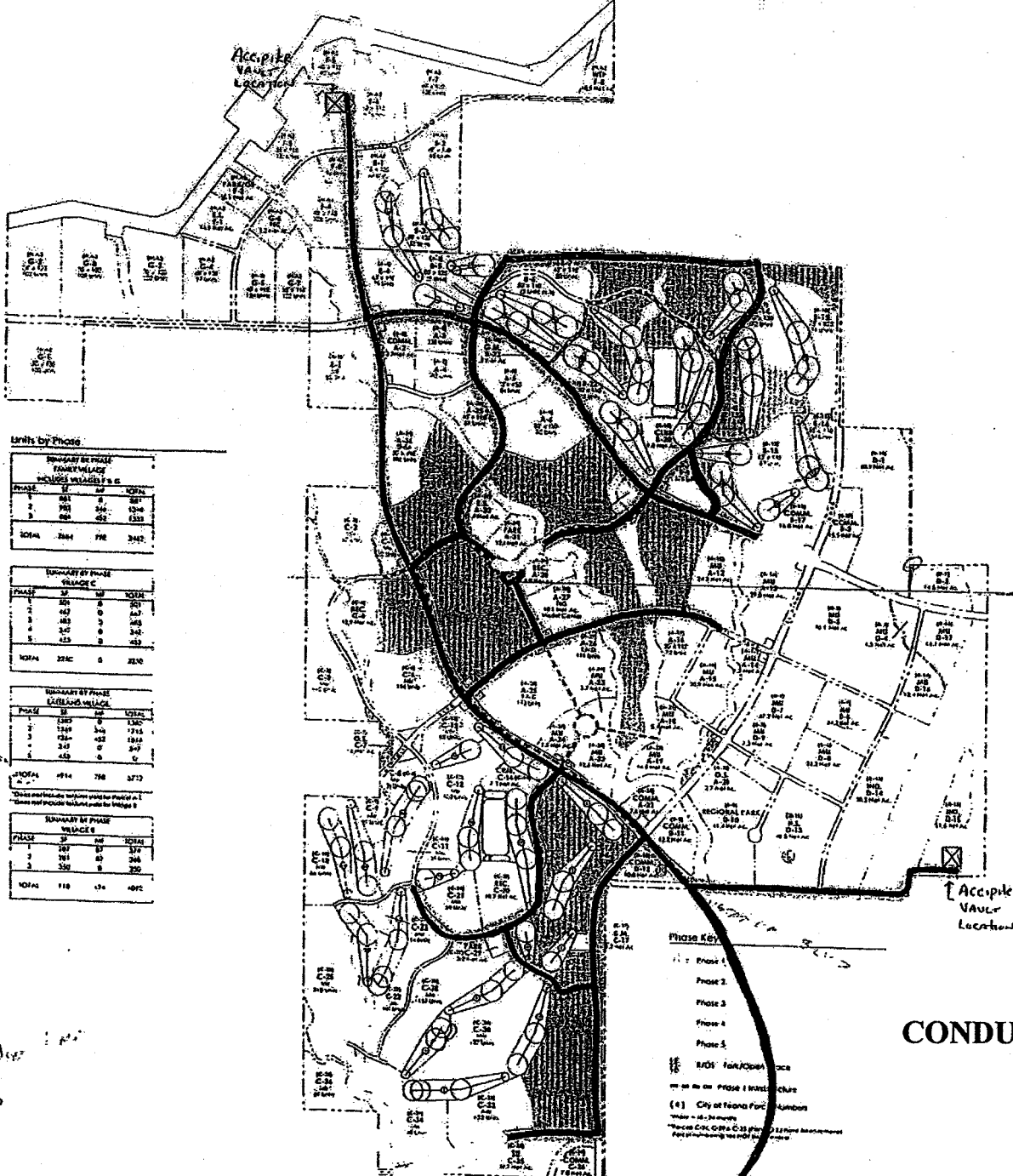
All of the following, as amended or corrected pursuant to any recorded Certificate of Correction or other recorded instrument of correction or amendment:

Title	Recording Information (Official Records of Maricopa County)
Final Plat of Vistancia Village A Parcel A1	Book 719 of Maps, page 31
Final Plat of Vistancia Village A Parcel A7	Book 719 of Maps, page 33
Final Plat for Vistancia Village A Parcel A8	Book 719 of Maps, page 30
Final Plat of Vistancia Village A Parcel A9	Book 718 of Maps, page 46
Final Plat of Vistancia Village A Parcel A10A	Book 655 of Maps, page 33
Final Plat of Vistancia Village A Parcel A10B	Book 657 of Maps, page 34
Final Plat of Vistancia Village A Parcel A12	Book 655 of Maps, page 32
Final Plat of Vistancia Village A Parcel A13	Book 655 of Maps, page 31
Final Plat of Vistancia Village A Parcel A14	Book 661 of Maps, page 25
Final Plat for Vistancia Village A Parcel A15	Book 719 of Maps, page 27
Final Plat of Vistancia Village A Parcel A19	Book 656 of Maps, page 39
Final Plat of Vistancia Village A Parcel A20	Book 656 of Maps, page 3
Final Plat of Vistancia Village A Parcel A30	Book 647 of Maps, page 41
Resubdivision of Lots 1, 2 and 3 of Vistancia Village A Parcel A30	Book 731 of Maps, page 8
Final Plat of Vistancia Village A Parcel A32	Book 655 of Maps, page 34
Final Plat of Vistancia Village A Parcel A33	Book 655 of Maps, page 29
Final Plat of Vistancia Village A Parcel A36	Book 655 of Maps, page 30
Final Plat of Vistancia Village A Parcel A37	Book 662 of Maps, page 26
Final Plat of Vistancia Village A Parcel A38	Book 719 of Maps, page 19
Final Plat for Vistancia Village A Parcel G4	Book 719 of Maps, page 29
Final Plat of Vistancia Village A Parcel G5	Book 718 of Maps, page 48
Final Plat of Vistancia Village A Parcel G10	Book 719 of Maps, page 50
Final Plat of Vistancia Village A Parcel G11	Book 720 of Maps, page 1

Title	Recording Information (Official Records of Maricopa County)
Final Plat of Vistancia Village B Parcel B2	Book 767 of Maps, page 49
Final Plat of Vistancia Village B Parcel B8	Book 768 of Maps, page 27
Final Plat of Vistancia Village B Parcel B10	Book 767 of Maps, page 48
Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19	Book 655 of Maps, page 35
Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21	Book 647 of Maps, page 30
Final Plat for Trilogy at Vistancia Parcel C28	Book 750 of Maps, page 34
Final Plat for Trilogy at Vistancia Parcel C30-Phase 1	Book 728 of Maps, page 42
Final Plat for Trilogy at Vistancia Parcel C30-Phase 2	Book 728 of Maps, page 43
Final Plat for Desert Sky at Trilogy at Vistancia Parcel C31	Book 664 of Maps, page 1
Final Plat for Trilogy at Vistancia Parcel C33	Book 707 of Maps, page 39
Final Plat for Trilogy at Vistancia Parcel C34	Book 706 of Maps, page 21
Map of Dedication for Vistancia – Phase 1A	Book 647 of Maps, page 31
Map of Dedication El Mirage Road, Ridgeline Road, & Westward Skies Drive	Book 719 of Maps, page 34
Map of Dedication Vistancia Boulevard, Lone Mountain Road, Creosote Drive & Westland Road	Book 721 of Maps, page 11
Map of Dedication Vistancia Boulevard & Sunrise Point	Book 718 of Maps, page 47
Map of Private Tract Dedication for Trilogy Boulevard at Vistancia	Book 664 of Maps, page 7
Map of Dedication for Lone Mountain Road	Book 744 of Maps, page 25
Final Plat of Blackstone at Vistancia Parcel F-7A	Book 777 of Maps, page 16
Final Plat of Blackstone at Vistancia Parcel F-7B	Book 780 of Maps, page 1
Map of Private Tract Dedication for Blackstone Drive and Sunrise Point	Book 768 of Maps, page 42
Final Plat for Trilogy at Vistancia Parcel C22	Book 776 of Maps, page 18

17805-1/1306277v4

EXHIBIT "3"



Units by Phase

SUMMARY BY PHASE PHASE 1			
PHASE	SP	AP	TOTAL
1	251	8	259
2	295	244	539
3	288	252	540
TOTAL	834	504	1338

SUMMARY BY PHASE PHASE 2			
PHASE	SP	AP	TOTAL
1	301	8	309
2	467	0	467
3	483	3	486
4	347	0	347
5	423	0	423
TOTAL	2021	11	2032

SUMMARY BY PHASE PHASE 3			
PHASE	SP	AP	TOTAL
1	125	0	125
2	1249	146	1395
3	1234	432	1666
4	317	0	317
5	452	0	452
TOTAL	2277	578	2855

SUMMARY BY PHASE PHASE 4			
PHASE	SP	AP	TOTAL
1	187	17	204
2	291	87	378
3	326	0	326
TOTAL	794	104	898

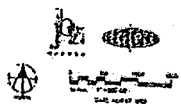
CONDUIT MAP

- Phase Key
- Phase 1
 - Phase 2
 - Phase 3
 - Phase 4
 - Phase 5
- RVD for Open Area
 for Phase 1 Interference
 City of Teano POC Alignment
*Scale: 1" = 20' Horizontal
 *Scale: 1" = 10' Vertical
 *Scale: 1" = 10' for 2-Dimensional
 *Scale: 1" = 10' for 3-Dimensional

ACCIPITER COMMUNICATIONS
6-JUL-05

PROPOSED
CON of BUILDING LOCATIONS

SHEA / SUNBELT PROPERTY
LAKELAND VILLAGE - PHASING MAP



Cox Vauler 503 Alignment

BILL OF SALE

EXHIBIT "4"

KNOW ALL MEN BY THESE PRESENTS:

That **CoxCom, Inc.**, a Delaware corporation ("Seller"), for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid by **Accipiter Communications, Inc.**, a Nevada corporation ("Buyer"), the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, set over and assign unto Buyer, its successors and assigns, all of Seller's right, title and interest in and to all of the assets (the "Assets") described on Schedule "A" hereto.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns forever.

Seller shall warrant and defend title to the Assets with respect to the acts of all parties during the time period of Seller's ownership of the Assets.

IN WITNESS WHEREOF, Seller has executed these presents by its duly authorized officer this ____ day of _____, 2005.

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By _____
J. Steven Rizley
General Manager and VP

STATE OF _____)
_____)
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of CoxCom, Inc., a Delaware corporation.

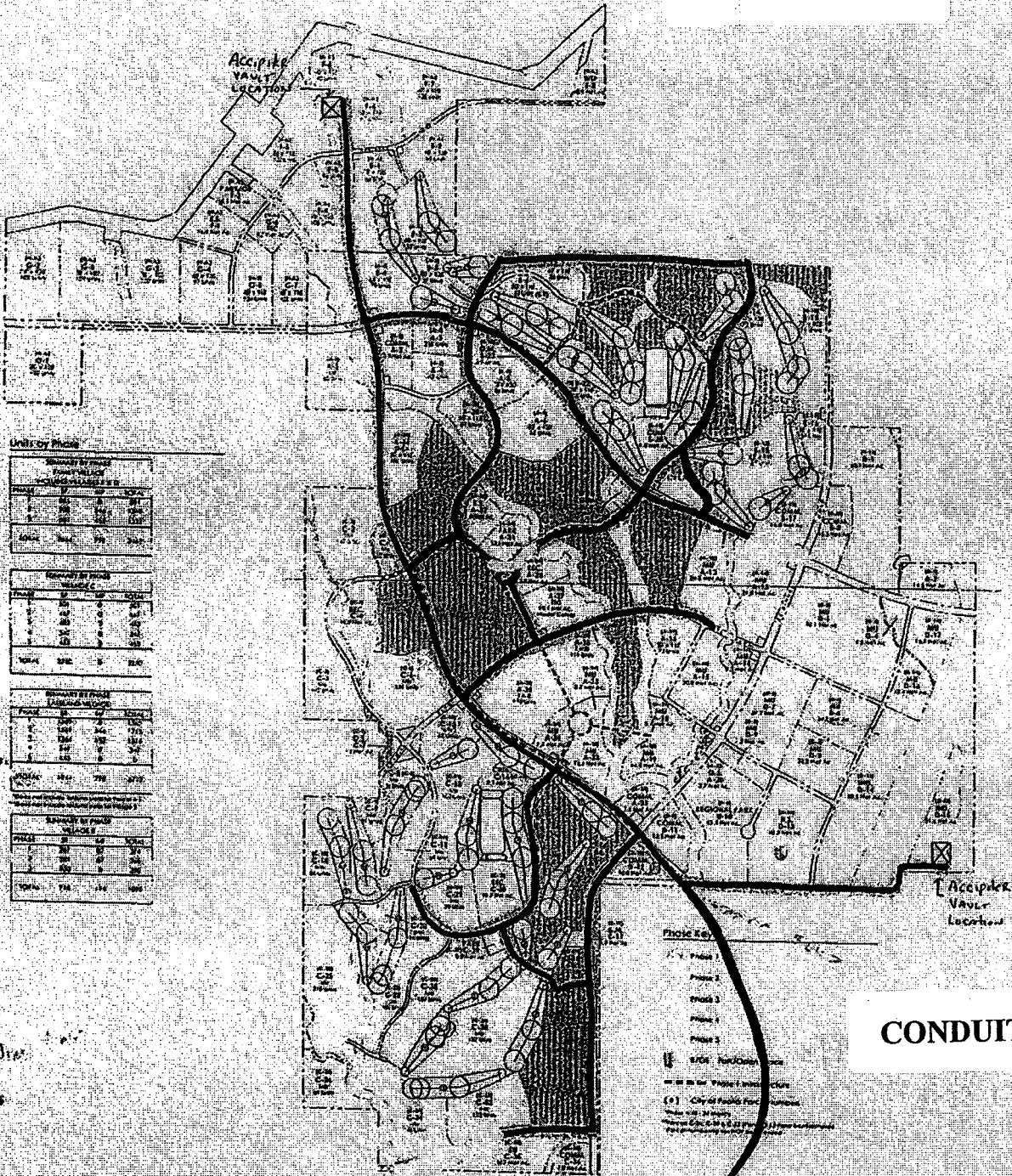
Notary Public

My Commission Expires:

SCHEDULE A
(Description of Assets)

An existing two inch diameter buried conduit, along with copies of existing engineering drawings related to the specifications, location and layout of the conduit, installed and in place in the Vistancia Development (located in Peoria, Arizona) along all of the roadways identified in dark black on the conduit map attached hereto as Exhibit 1, and also installed and in place along Vistancia Boulevard from Highway 303 to the entrance of the Vistancia Development, totaling approximately 77,000 linear feet of conduit. The conduit is 2" in diameter and shall include connections to two CEVs ("controlled environment vaults") (one near the APS substation and one north of the current development) as generally depicted on the conduit map attached as Exhibit 1. The conduit also includes access to the conduit at mutually agreed CoxCom junction points and a 2" conduit stub to be installed by CoxCom outside each CoxCom junction point.

Exhibit "1"



Units by Phase

SHOWN BY PHASE			
Phase	Units	Area	Value
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
6	600	600	600
7	700	700	700
8	800	800	800
9	900	900	900
10	1000	1000	1000

SHOWN BY PHASE			
Phase	Units	Area	Value
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
6	600	600	600
7	700	700	700
8	800	800	800
9	900	900	900
10	1000	1000	1000

CONDUIT MAP

Phase Key
 Phase 1
 Phase 2
 Phase 3
 Phase 4
 Phase 5
 Phase 6
 Phase 7
 Phase 8
 Phase 9
 Phase 10

ACCIPITER COMMUNICATIONS
 6-JUL-75

PROPOSED KEY OF BUILDING LOCATIONS

SHEA / SUNBELT PROPERTY
 LAKELAND VILLAGE - PHASING MAP



Cox
 503 Alignment

WHEN RECORDED, RETURN TO:

Martin A. Aronson
Morrill & Aronson, P.L.C.
Suite 340
One East Camelback Road
Phoenix, AZ 85012-1648

EXHIBIT "5A"

DECLARATION OF DE-ANNEXATION
(Vistancia)

This Declaration of De-Annexation (the "De-Annexation Declaration") is made as of this _____ day of _____, 2005, by VISTANCIA, LLC, a Delaware limited liability company (hereinafter referred to as the "Declarant").

RECITALS

A. WHEREAS, Vistancia, LLC, a Delaware limited liability company is the original Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Vistancia, dated July 9, 2003, recorded on July 9, 2003, at Instrument No. 2003-0898772, Official Records of Maricopa County, Arizona.

B. Defined terms appear in the De-Annexation Declaration with the first letter of each word in the term capitalized. Defined terms used in the De-Annexation Declaration and not otherwise defined herein shall have the meanings attributed to such terms in the Declaration.

C. Pursuant to Article XIII, Section 13.3 of the Declaration, Declarant has the right to delete from the Covered Property and remove from the effect of the Declaration one or more portions of the Covered Property, subject to the terms and conditions set forth in such Section 13.3.

D. Declarant is the owner of that portion of the Covered Property described on Exhibit A attached hereto (the "Deleted Property"), which Declarant desires to delete from the Covered Property and remove from the effect of the Declaration pursuant to Article XIII, Section 13.3 of the Declaration. No Dwelling Units or Common Area recreational facilities have been constructed on the Deleted Property, and such deletion and removal will not deprive Owners and occupants of other parts of the Covered Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Covered Property.

DECLARATION

NOW, THEREFORE, Declarant hereby declares as follows:

1. In accordance with Article XIII, Section 13.3 of the Declaration, the Deleted Property is hereby deleted from the Covered Property and removed from the effect of the Declaration. From and after the effective date of this De-Annexation Declaration, the Declaration shall not affect or otherwise encumber the Deleted Property.

2. This De-Annexation Declaration shall be effective upon the Recordation of this instrument in the official records of Maricopa County, Arizona.

IN WITNESS WHEREOF, Declarant has caused this De-Annexation Declaration to be executed as of the date first above written.

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C.,
an Arizona limited liability company,
its Managing Member

By: Sunbelt PP, LLLP, an Arizona
limited liability limited partnership,
its manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its
Chief Operating Officer

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member of VISTANCIA, LLC, a Delaware limited liability company.

My commission expires:

Notary Public



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

EXHIBIT A

October 26, 2005
Vistancia, LLC
Southern Parcel
Page 1 of 1

LEGAL DESCRIPTION

A parcel lying within the Southwest Quarter of Section 30, Township 5 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at a point on the south line of the Southwest Quarter of said Section 30, from which point the southwest corner thereof bears S 89°09'15" W a distance of 873.10 feet;

Thence N 00°50'45" W, leaving said south line, a distance of 40.00 feet;

Thence N 89°09'15" E a distance of 40.00 feet;

Thence S 00°50'45" E a distance of 40.00 feet to a point on the south line of said Southwest Quarter;

Thence S 89°09'15" W, along said south line, a distance of 40.00 feet to the POINT OF BEGINNING.

Said parcel contains 0.0367 acres of land, more or less.

The Basis of Bearing for the above description is S 89°09'15" W for the south line of the Southwest Quarter of Section 30, Township 5 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona, as shown on an Amended Results of Survey recorded Book 632, Page 24, Maricopa County Records.

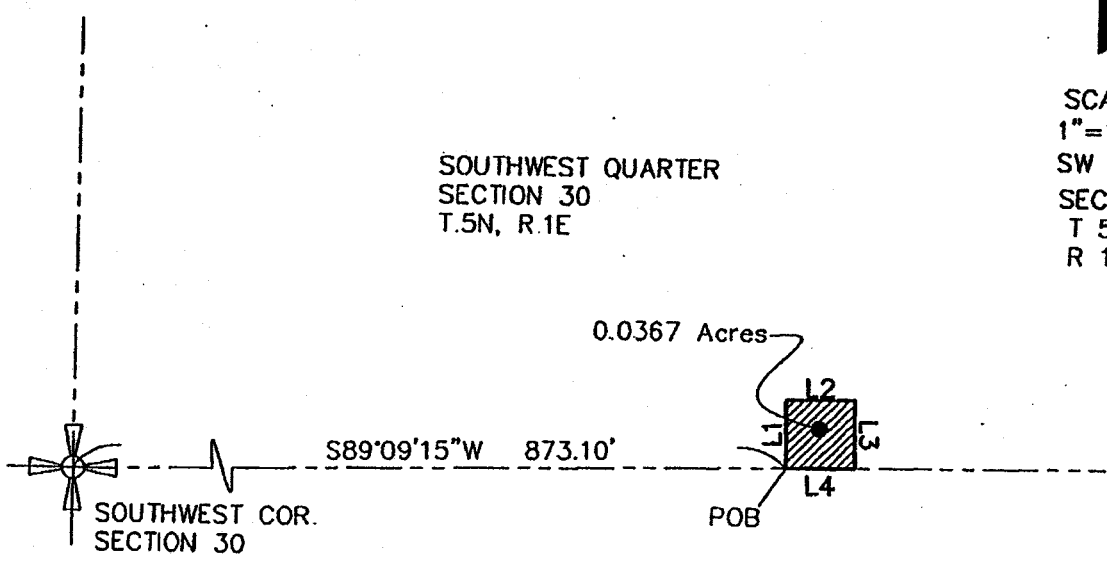


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SCALE:
1"=100'
SW 1/4
SEC 30
T 5 N
R 1 E


SOUTHWEST QUARTER
SECTION 30
T.5N, R.1E



LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°50'45"W	40.00'
L2	N89°09'15"E	40.00'
L3	S00°50'45"E	40.00'
L4	S89°09'15"W	40.00'



Vistancia

 A Stanley Group Company
Stanley Consultants INC Engineering, Environmental
and Construction Services - Worldwide

When recorded, return to:

Vistancia, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Attn: Curt Smith

EXHIBIT "5B"

DECLARATION OF PROPERTY DEVELOPMENT RESTRICTIONS

This Declaration of Property Development Restrictions (the "*Declaration*") is executed as of the ___ day of _____, 2005, by VISTANCIA, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company) ("*Declarant*").

RECITALS:

A. Declarant is the master developer of the approximately 7,100 acres of land being developed as the master-planned community located in the City of Peoria ("*City*"), County of Maricopa, State of Arizona, known as "*Vistancia*," which land is more particularly described in Exhibit A attached to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia (as has been or may be amended, the "*Vistancia Declaration*") dated July 9, 2003, and recorded July 9, 2003, at Instrument No. 03-0898772, Official Records of Maricopa County, Arizona (said land being hereinafter referred to as the "*Project*").

B. Immediately following the recordation of this Declaration, Declarant intends to convey that certain real property described in Exhibit A attached hereto and incorporated herein (the "*Property*"). The Property is located within the exterior boundaries of the Project, but the Property has not been annexed under the Vistancia Declaration and, pursuant to that Notice of Removal of Annexable Property from Declaration of Covenants, Conditions and Restrictions for Vistancia recorded concurrently herewith, the Property is not included within the definition and scope of "Annexable Property" under the Vistancia Declaration.

C. As part of a general plan to protect and enhance the value and desirability of the Property and the Project, Declarant now desires to record this Declaration, in order to establish certain development restrictions applicable to the Property, as hereinafter provided.

DECLARATIONS:

NOW, THEREFORE, Declarant hereby declares that the Property shall be owned, held, sold, transferred, conveyed, hypothecated and encumbered subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Project and the Property, and which shall run with the Property and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of Declarant as hereinafter provided.

1. Improvement Restrictions. No above-ground building, fencing, signage or structure (each an "*Improvement*") shall be undertaken, constructed, installed, placed, maintained, or used on the Property or any portion thereof without Declarant's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. No grading shall be undertaken on the Property without Declarant's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
2. Use Restrictions and Maintenance Requirements.
 - (a) Permitted Use. Throughout the Term (defined below) of this Declaration, the Property shall be owned, held, leased, transferred, sold, conveyed, mortgaged, developed, improved, repaired, maintained, used, operated and occupied solely for the purpose of a "controlled environmental vault" and ancillary related facilities lines and conduits (collectively, "*Improvements*") and Landscaping, and in accordance with the requirements of applicable law and this Declaration (the "*Permitted Use*"). All other uses shall be prohibited on the Property during the Term.
 - (b) General Prohibited Uses. No noxious, illegal or offensive use or operation, nor any use in furtherance of a noxious, illegal or offensive trade or activity, shall be made, conducted or permitted on the Property, nor may any use or operation be made, conducted or permitted that is offensive or detrimental to any other property in the vicinity of the Property or the occupants thereof. The Property shall not be used in any manner which, in the reasonable determination of Declarant, may be, or may become, an annoyance or nuisance (whether public or private) to the Project, or any portion thereof, or any Improvements located thereon, or which shall in any way interfere with the quiet enjoyment of each of the owners and occupants of any portion of the Project, including, but not limited to, any of the following: (i) noxious, toxic, or corrosive fumes, gases or discharges; (ii) smoke or radiation; (iii) ground conditions which will produce dust; (iv) excessive noise and/or vibration; (v) intense glare or heat; (vi) maintaining, breeding or raising any animal, bird, fowl, poultry or livestock; or (vii) the existence of any thing or condition which shall result in breeding or harboring infectious plant diseases or noxious insects.

- (c) No Storage; Exceptions. The Property shall not be used for any storage purposes, except that construction materials to be used on the Property may be stored on the Property during the actual construction period of any Improvements to be made to the Property.
- (d) Condition Prior to Construction. The Property shall be kept in a neat, orderly and clean condition, free of all weeds, litter and debris, prior to the date of commencement of construction of the Improvements.
- (e) Condition During Construction. The Property shall be kept in a neat, orderly and clean condition during the period of any construction thereon.
- (f) Surface Condition After Construction. The homeowner's association or maintenance organization responsible for maintenance of landscaping on adjacent areas of the Project shall install and maintain landscaping consistent with the immediate area free of charge to Accipiter. The landscaping plan shall be submitted to the Owner (defined below) for approval. Owner's written approval shall not be unreasonably withheld, conditioned or delayed.
- (g) Compliance with Law. The Property shall comply with all laws, ordinances, codes, rules and regulations applicable to the ownership of the Property and the development and construction of improvements thereto, including, without limitation, all applicable dust control laws, ordinances, rules and regulations.
- (h) Maintenance. The Improvements (and any other Improvements approved in accordance with Section 1) on the Property shall at all times be kept in good condition and repair.
- (i) Protection from Damage. During the course of construction on the Property, Owner shall protect from damage by Owner, its agents, employees, contractors, invitees and licensees (collectively, "Permittees") (or immediately repair once damaged) all pavement, curbs, gutters, sidewalks, streets, shoulders, utility lines and appurtenances, grade stakes, surveyor monuments, landscaping, drainage facilities, hydrants, and other property within the Project, and shall keep all such property, and all pedestrian and road rights-of-way and drives, reasonably clean and clear of its equipment, building materials, dirt, debris and similar materials.
- (j) Temporary Occupancy and Temporary Buildings. No temporary buildings or structures of any kind shall be placed on the Property at any time.
- (k) Mineral Exploration. The Property shall not be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances of any kind.

- (l) Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.
 - (m) Signs. No exterior signs or advertising displays or devices of any type shall be permitted on the Property without the prior written approval of Declarant. No flags shall be displayed on the Property other than an American flag in accordance with Declarant's regulations therefor and applicable law.
 - (n) Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers and receptacle enclosures of a type, size and style which are approved in writing by Declarant. In no event shall such containers be maintained so as to be visible from any street or other property adjacent to the Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Property on a twice-weekly basis and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on the Property.
 - (o) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon the Property or any street in the Project, and no inoperable vehicle, including but not limited to vehicles with flat tires, may be stored or parked on the Property so as to be visible from any street or other property adjacent to the Property; provided, however, that the provisions of this Subsection shall not apply to emergency vehicle repairs.
3. Approval of Additional Covenants. No additional covenants, conditions, restrictions or easements may be recorded against the Property without the prior written approval of Declarant and Owner.
4. Subdivision of Property. The Property may not be further subdivided, separated, platted or rezoned without the prior written approval of Declarant.
5. Reservation of Easements.
- (a) Declarant hereby reserves for itself and grants to Owner and to the owners of portions of the Project adjacent to the Property, reciprocal easements of encroachment between the Property and adjacent portions of the Project, for the unintentional placement, or settling or shifting, of improvements constructed, installed or altered thereon. Such easement shall extend for a distance not to exceed two (2) feet, as measured from the common boundary. In no event shall an easement of encroachment exist or be created hereby if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

- (b) Owner shall cooperate in the granting of reasonable and customary non-exclusive easements to Declarant, other owners of portions of the Project and/or any governmental entity or utility company, for utility facilities to serve any property within the Project and for temporary rights of entry in connection with the construction of initial improvements on adjacent property so long as such easements do not interfere with the Permitted Use of the Property.
- (c) All work associated with the exercise of the easements described in this Section 6 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by such easement. Upon completion of the work, the person exercising the easement shall restore, at such person's sole cost and expense, any property damaged in connection with such work, to the extent reasonably possible, to substantially its condition prior to the commencement of the work, including without limitation any paving and landscaping improvements.
- (d) The Property is hereby subjected to a perpetual non-exclusive easement appurtenant to and for the benefit of the Project (i) for the purpose of storm water drainage and run off not inconsistent with the Permitted Use of the Property, which easement shall include without limitation the right to connect to existing storm water drainage channels, basins, lines or other facilities and to divert storm water runoff into such storm water drainage channels, basins, lines or other facilities at such points and in such manner as may be approved by the Declarant from time to time, and (ii) to permit the flow of storm water runoff over the Property to retention facilities outside the boundaries of the Property so long as it does not interfere with the Permitted Use of the Property. The foregoing easement shall be subject to any and all restrictions regarding quantity, rate and quality of discharge that the Declarant may hereafter impose or which may be imposed by law or any federal, state, county or municipality having jurisdiction over the Project.
- (e) Nothing contained in this Declaration shall be deemed to create any implied easements not otherwise expressly provided for herein.

6. Environmental Compliance.

- (a) Compliance. Owner shall comply, and shall ensure that all of its Permittees, guests and tenants comply, with any and all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like now or hereafter relating to or governing in any way the environmental condition of the Property or the presence of Hazardous Materials (defined below) on, in, under or affecting all or any portion of the Property including, without limitation, the statutes referenced in Subsection 7(b).
- (b) Definition. As used herein, the term "*Hazardous Material*" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local

governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) pesticides, (iv) polychlorinated biphenyls, (v) solvents, (vi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), (vii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (viii) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., (ix) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116, or (x) defined as an "Extremely Hazardous Substance" under Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002, et seq.

7. Term. All of the covenants, conditions, restrictions, assessments and other provisions of this Declaration shall remain in full force and effect for so long as the Vistancia Declaration remains in full force and effect (the "*Term*"), unless sooner terminated by Declarant pursuant to Section 11 below.
8. Remedies.
 - (a) Remedies Cumulative. The remedies specified in this Declaration shall be cumulative and in addition to all other remedies permitted at law or in equity, including without limitation specific performance and other injunctive relief and payment of any amounts due.
9. Runs with the Land. All of the covenants, conditions, restrictions and other provisions of this Declaration shall run with the Property and shall be binding upon the Property, the Owner, the Declarant, all persons or entities having or acquiring any right, title or interest in or to the Property or any part thereof, and their personal representatives, successors and assigns. By acceptance of any deed or by the acquiring of any right, title or interest in or to the Property or any portion thereof, each person or entity, for itself, its heirs, personal representatives, successors, transferees, grantees and assignees, binds itself and all such parties to all the covenants, conditions, restrictions and other provisions of this Declaration imposed on the Property or the Owner thereof by this Declaration.
10. Termination and Amendment. This Declaration may be terminated at any time only by a written instrument executed by Declarant and Owner. This Declaration may be amended at any time, or from time to time, only by a written instrument executed by Declarant and Owner. In no event shall any such termination or amendment be effective unless and until it is recorded in the Official Records of Maricopa County, Arizona.
11. Waiver. The waiver of, or failure to enforce, any breach or violation of this Declaration shall not be deemed to be an abandonment of any right or provision under this Declaration, nor shall it be deemed to be a waiver of the right to enforce any subsequent

breach or violation of this Declaration, regardless of whether any person affected thereby had knowledge of the breach or violation.

12. Severability; Interpretation; Gender. Invalidation of any one of the covenants, conditions, restrictions or other provisions of this Declaration by judgment or court order shall in no way affect any other provisions and such other provisions shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of sections and subsections of this Declaration are for convenience only and shall not affect the interpretation hereof.
13. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is recorded in the Official Records of Maricopa County, Arizona.
14. Notices. All notices, consents, approvals and other communications to Declarant provided for herein or given to Declarant in connection herewith shall be validly given, made, delivered or served if in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to:

Vistancia, LLC
c/o Sunbelt Holdings
6720 North Scottsdale Road, Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis Smith

with required copy to:

Storey & Burnham PLC
3030 E. Camelback Road, Suite 265
Phoenix, AZ 85016
Attention: Lesa J. Storey

or to such other address as Declarant may from time to time designate in a written instrument recorded in the Official Records of Maricopa County, Arizona.

All notices, consents, approvals and other communications to Owner provided for herein or given to Owner in connection herewith shall be validly given, made, delivered or served if in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to the address of the Property or to such other address as

Owner may designate by written notice delivered to Declarant from time to time in accordance with this Section.

15. Enforcement. This Declaration may be enforced only by Declarant, and no other person shall have any right or cause of action hereunder.

16. Definitions.

(a) Declarant Definition. Notwithstanding any contrary provision of this Declaration, as used herein, the term "*Declarant*" shall mean Vistancia, LLC, a Delaware limited liability company, its successors, or any person or entity to whom it may expressly assign its rights and interest hereunder (which assignment shall be evidenced by an instrument recorded in the Official Records of Maricopa County, Arizona).

(b) Owner Definition. As used herein, the term "*Owner*" shall mean the record owner at the subject point in time of fee simple title to the Property other than Declarant, whether or not subject to any mortgage, deed of trust or other security instrument, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to the Property is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

VISTANCIA, LLC, a Delaware limited liability company,
formerly known as Shea Sunbelt Pleasant Point, LLC, a
Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona
limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, Chief
Operating Officer

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member in Vistancia, LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

My Commission Expires:

EXHIBIT A
(Legal Description of Property)



Stanley Consultants INC

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

EXHIBIT A

October 26, 2005
Vistancia, LLC
Southern Parcel
Page 1 of 1

LEGAL DESCRIPTION

A parcel lying within the Southwest Quarter of Section 30, Township 5 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at a point on the south line of the Southwest Quarter of said Section 30, from which point the southwest corner thereof bears S 89°09'15" W a distance of 873.10 feet;

Thence N 00°50'45" W, leaving said south line, a distance of 40.00 feet;

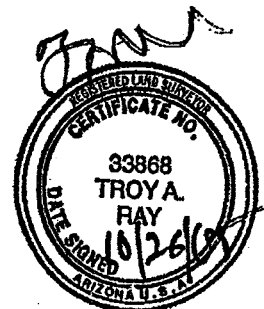
Thence N 89°09'15" E a distance of 40.00 feet;

Thence S 00°50'45" E a distance of 40.00 feet to a point on the south line of said Southwest Quarter;

Thence S 89°09'15" W, along said south line, a distance of 40.00 feet to the POINT OF BEGINNING.

Said parcel contains 0.0367 acres of land, more or less.

The Basis of Bearing for the above description is S 89°09'15" W for the south line of the Southwest Quarter of Section 30, Township 5 North, Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona, as shown on an Amended Results of Survey recorded Book 632, Page 24, Maricopa County Records.

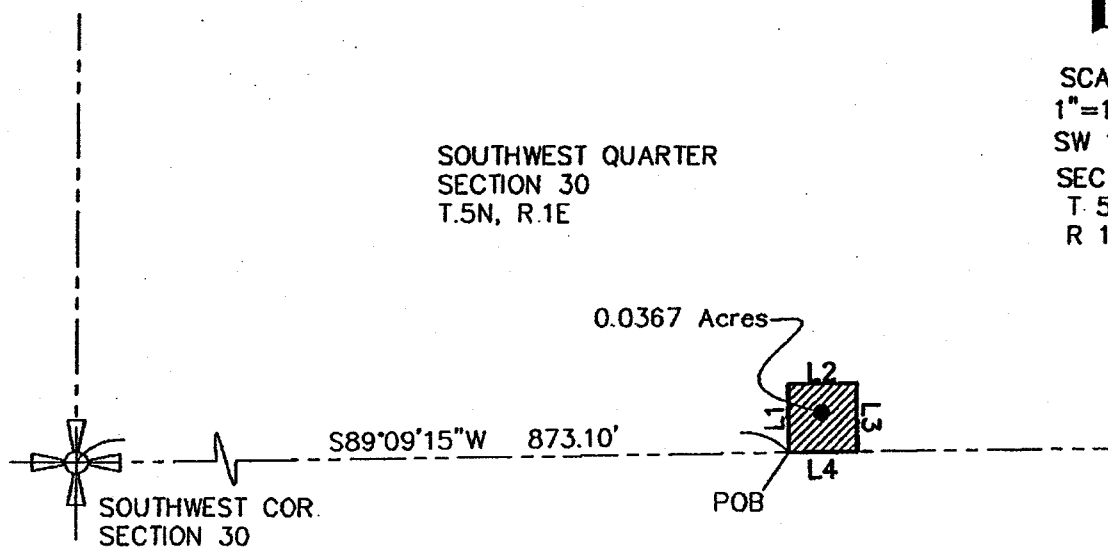


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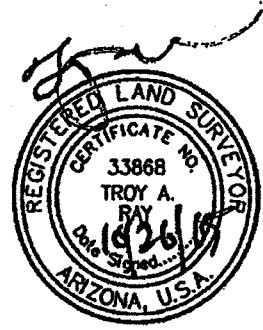


SCALE:
1"=100'
SW 1/4
SEC 30
T 5 N
R 1 E


SOUTHWEST QUARTER
SECTION 30
T.5N, R.1E



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Vistancia

 A Stanley Group Company
Stanley Consultants INC. Engineering, Environmental and Construction Services - Worldwide

When Recorded, Mail to:

Martin A. Aronson
Morrill & Aronson, P.L.C.
Suite 340
One East Camelback Road
Phoenix, AZ 85012-1648

EXHIBIT "5C"

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, VISTANCIA, LLC, a Delaware limited liability company ("*Grantor*"), does hereby convey to ACCIPITER COMMUNICATIONS, INC., a Nevada corporation ("*Grantee*"), the following described real property (the "*Property*") situated in Maricopa County, Arizona:

**SEE EXHIBIT "A" ATTACHED HERETO AND BY
THIS REFERENCE MADE A PART HEREOF**

SUBJECT TO: current taxes; patent reservations; all items shown on Exhibit "B" attached hereto and by this referenced made a part hereof.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be executed this ___ day of _____, 2005.

VISTANCIA, LLC, a Delaware limited liability company

By: SUNBELT PLEASANT POINT INVESTORS, LLC,
an Arizona limited liability company, its Member

By: SUNBELT PP, LLLP, an Arizona limited liability
limited partnership, its Manager

By: SUNBELT HOLDINGS MANAGEMENT,
INC., an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith
Its: Executive Vice President

STATE OF ARIZONA)
) Ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____ 2005, by Curtis E. Smith, the Executive Vice President of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, LLC, an Arizona limited liability company, the Member of Vistancia, LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

My Commission Expires:



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

October 26, 2005
Vistancia, LLC
Southern Parcel
Page 1 of 1

EXHIBIT A

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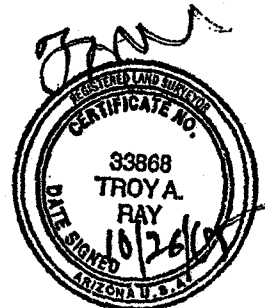
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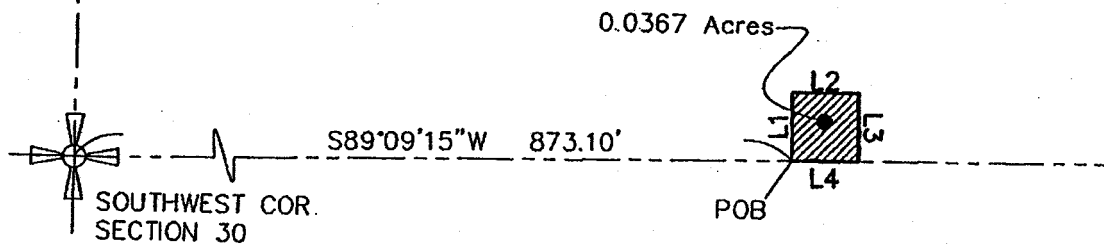


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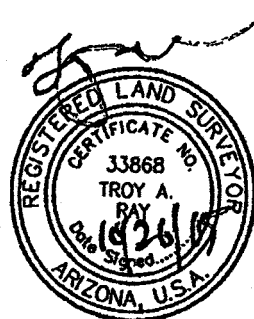


SCALE:
1"=100'
SW 1/4
SEC 30
T 5 N
R 1 E

SOUTHWEST QUARTER
SECTION 30
T.5N, R.1E



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L4	S89°09'15"W	40.00'



Vistancia

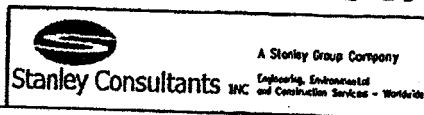


EXHIBIT B
(South Parcel)

1. Water rights, claims or title to water, whether or not shown by the public records.
2. Reservations or Exceptions in Patents, or in Acts authorizing the issuance thereof.
3. The right to enter upon said land and prospect for and remove all coal, oil, gas, minerals or other substances, as reserved in the Patent to said land.
4. 2005 taxes, a lien, but not yet due and payable.
5. Liabilities and Obligations imposed upon said land by reason of its inclusion within the following District(s) and/or Association(s):
 - a) Central Arizona Vocational Institute of Technology
6. All matters shown on plat recorded in Book 588 of Maps, page 3.
7. All matters shown on plat recorded in Book 602 of Maps, page 24.
8. All matters set forth in instrument recorded in Document No., 20000756813.
9. All matters set forth in instrument recorded in Document No. 20010986718 and City Agreement recorded in Document No. 20021387298 and Assigned in Document No. 20021387299.

WHEN RECORDED, RETURN TO:

EXHIBIT "5D"

Martin A. Aronson
Morrill & Aronson, P.L.C.
Suite 340
One East Camelback Road
Phoenix, AZ 85012-1648

DECLARATION OF DE-ANNEXATION
(Vistancia)

This Declaration of De-Annexation (the "De-Annexation Declaration") is made as of this ____ day of _____, 2005, by VISTANCIA, LLC, a Delaware limited liability company (hereinafter referred to as the "Declarant").

RECITALS

A. WHEREAS, Vistancia, LLC, a Delaware limited liability company is the original Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Vistancia, dated July 9, 2003, recorded on July 9, 2003, at Instrument No. 2003-0898772, Official Records of Maricopa County, Arizona.

B. Defined terms appear in the De-Annexation Declaration with the first letter of each word in the term capitalized. Defined terms used in the De-Annexation Declaration and not otherwise defined herein shall have the meanings attributed to such terms in the Declaration.

C. Pursuant to Article XIII, Section 13.3 of the Declaration, Declarant has the right to delete from the Covered Property and remove from the effect of the Declaration one or more portions of the Covered Property, subject to the terms and conditions set forth in such Section 13.3.

D. Declarant is the owner of that portion of the Covered Property described on Exhibit A attached hereto (the "Deleted Property"), which Declarant desires to delete from the Covered Property and remove from the effect of the Declaration pursuant to Article XIII, Section 13.3 of the Declaration. No Dwelling Units or Common Area recreational facilities have been constructed on the Deleted Property, and such deletion and removal will not deprive Owners and occupants of other parts of the Covered Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Covered Property.

DECLARATION

NOW, THEREFORE, Declarant hereby declares as follows:

1. In accordance with Article XIII, Section 13.3 of the Declaration, the Deleted Property is hereby deleted from the Covered Property and removed from the effect of the Declaration. From and after the effective date of this De-Annexation Declaration, the Declaration shall not affect or otherwise encumber the Deleted Property.

2. This De-Annexation Declaration shall be effective upon the Recordation of this instrument in the official records of Maricopa County, Arizona.

IN WITNESS WHEREOF, Declarant has caused this De-Annexation Declaration to be executed as of the date first above written.

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C.,
an Arizona limited liability company,
its Managing Member

By: Sunbelt PP, LLLP, an Arizona
limited liability limited partnership,
its manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its
Chief Operating Officer

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member of VISTANCIA, LLC, a Delaware limited liability company.

My commission expires:

Notary Public



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

EXHIBIT A



October 26, 2005
Vistancia, LLC
Northern Parcel
Page 1 of 1

LEGAL DESCRIPTION

A parcel lying within the Northwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the west quarter corner (GLO brass cap) of said Section 14 from which point the southwest corner (GLO brass cap) thereof bears S 00°14'16" W a distance of 2640.53 feet;

Thence N 88°28'55" E a distance of 278.68 feet to the POINT OF BEGINNING;

Thence N 18°30'04" W a distance of 41.13 feet;

Thence N 72°18'09" E a distance of 40.00 feet to a point on the west line of Tract "K", as shown on the Map of Dedication for Vistancia Boulevard, Lone Mountain Road, Westland Road and Creosote Drive, recorded in Book 721, Page 11, Maricopa County Records, the beginning of a non-tangent curve to the left, from which point the radius point bears N 72°18'09" E;

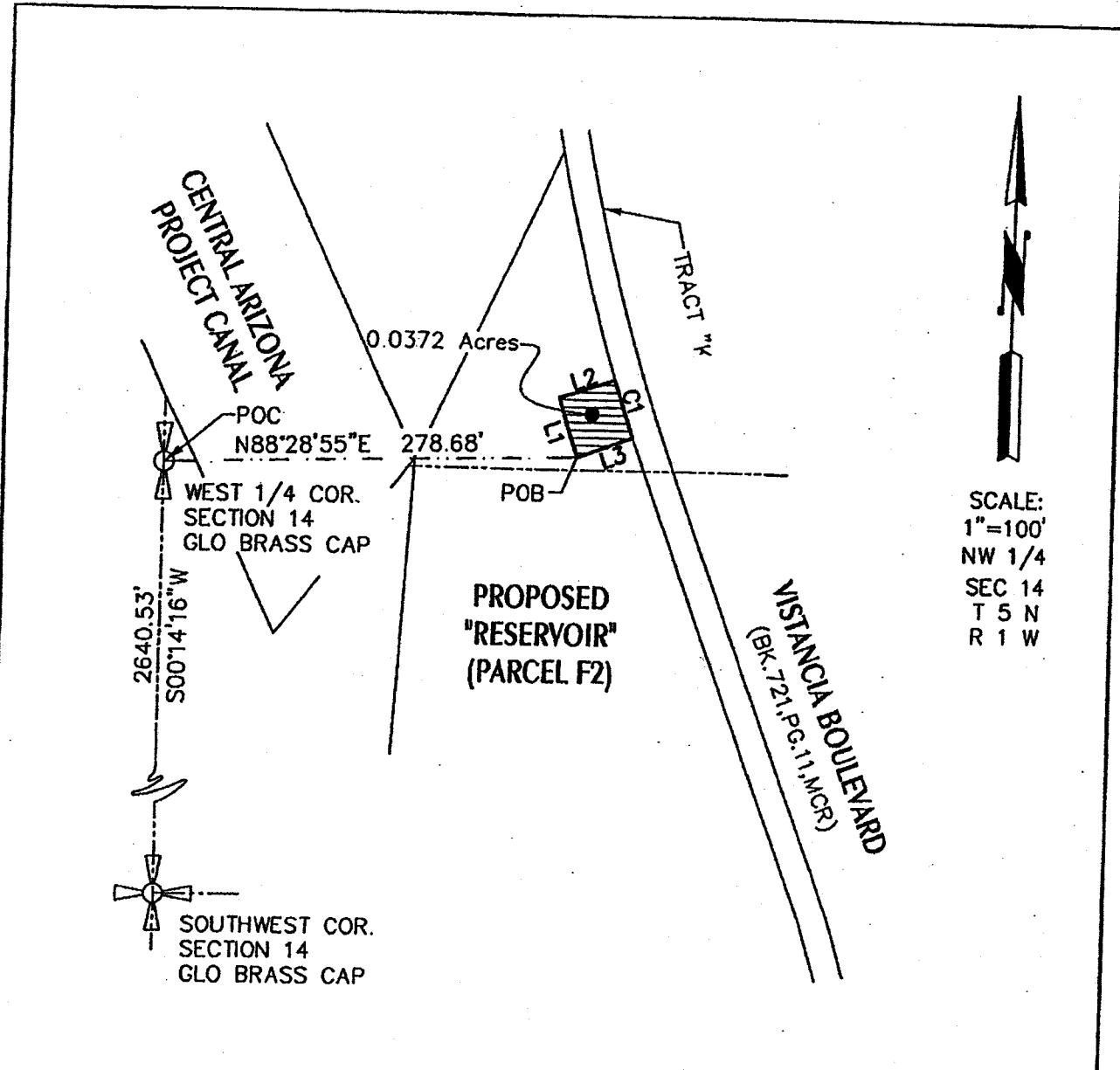
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

Thence S 70°41'42" W, leaving said west line of Tract "K", a distance of 40.00 feet to the POINT OF BEGINNING.

Said parcel contains 0.0372 acres of land, more or less.

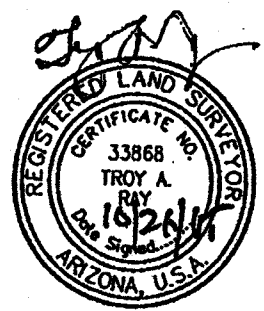
The Basis of Bearing for the above description is S 00°14'16" W for the west line of the Southwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, as shown on an Amended Results of Survey recorded Book 632, Page 24, Maricopa County Records.

Q:\16048\Survey\Village F Plats\VST-F2\Documents\Northern Parcel doc




LINE TABLE		
LINE	BEARING	LENGTH
L1	N18°30'04"W	41.13'
L2	N72°18'09"E	40.00'
L3	S70°41'42"W	40.00'

CURVE TABLE				
CURVE	DELTA	RADIUS	CH. BEARING	LENGTH
C1	1°36'27"	1426.00'	S18°30'04"E	40.01'



Vistancia


 A Stanley Group Company
Stanley Consultants INC Engineering, Environmental and Construction Services - Worldwide

When recorded, return to:

EXHIBIT "5E"

Vistancia, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Attn: Curt Smith

DECLARATION OF PROPERTY DEVELOPMENT RESTRICTIONS

This Declaration of Property Development Restrictions (the "*Declaration*") is executed as of the ___ day of _____, 2005, by VISTANCIA, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company) ("*Declarant*").

RECITALS:

A. Declarant is the master developer of the approximately 7,100 acres of land being developed as the master-planned community located in the City of Peoria ("*City*"), County of Maricopa, State of Arizona, known as "*Vistancia*," which land is more particularly described in Exhibit A attached to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia (as has been or may be amended, the "*Vistancia Declaration*") dated July 9, 2003, and recorded July 9, 2003, at Instrument No. 03-0898772, Official Records of Maricopa County, Arizona (said land being hereinafter referred to as the "*Project*").

B. Immediately following the recordation of this Declaration, Declarant intends to convey that certain real property described in Exhibit A attached hereto and incorporated herein (the "*Property*"). The Property is located within the exterior boundaries of the Project, but the Property has not been annexed under the Vistancia Declaration and, pursuant to that Notice of Removal of Annexable Property from Declaration of Covenants, Conditions and Restrictions for Vistancia recorded concurrently herewith, the Property is not included within the definition and scope of "Annexable Property" under the Vistancia Declaration.

C. As part of a general plan to protect and enhance the value and desirability of the Property and the Project, Declarant now desires to record this Declaration, in order to establish certain development restrictions applicable to the Property, as hereinafter provided.

DECLARATIONS:

NOW, THEREFORE, Declarant hereby declares that the Property shall be owned, held, sold, transferred, conveyed, hypothecated and encumbered subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Project and the Property, and which shall run with the Property and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of Declarant as hereinafter provided.

1. Improvement Restrictions. No above-ground building, fencing, signage or structure (each an "*Improvement*") shall be undertaken, constructed, installed, placed, maintained, or used on the Property or any portion thereof without Declarant's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. No grading shall be undertaken on the Property without Declarant's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
2. Use Restrictions and Maintenance Requirements.
 - (a) Permitted Use. Throughout the Term (defined below) of this Declaration, the Property shall be owned, held, leased, transferred, sold, conveyed, mortgaged, developed, improved, repaired, maintained, used, operated and occupied solely for the purpose of a "controlled environmental vault" and ancillary related facilities lines and conduits (collectively, "*Improvements*") and Landscaping, and in accordance with the requirements of applicable law and this Declaration (the "*Permitted Use*"). All other uses shall be prohibited on the Property during the Term.
 - (b) General Prohibited Uses. No noxious, illegal or offensive use or operation, nor any use in furtherance of a noxious, illegal or offensive trade or activity, shall be made, conducted or permitted on the Property, nor may any use or operation be made, conducted or permitted that is offensive or detrimental to any other property in the vicinity of the Property or the occupants thereof. The Property shall not be used in any manner which, in the reasonable determination of Declarant, may be, or may become, an annoyance or nuisance (whether public or private) to the Project, or any portion thereof, or any Improvements located thereon, or which shall in any way interfere with the quiet enjoyment of each of the owners and occupants of any portion of the Project, including, but not limited to, any of the following: (i) noxious, toxic, or corrosive fumes, gases or discharges; (ii) smoke or radiation; (iii) ground conditions which will produce dust; (iv) excessive noise and/or vibration; (v) intense glare or heat; (vi) maintaining, breeding or raising any animal, bird, fowl, poultry or livestock; or (vii) the existence of any thing or condition which shall result in breeding or harboring infectious plant diseases or noxious insects.

- (c) No Storage; Exceptions. The Property shall not be used for any storage purposes, except that construction materials to be used on the Property may be stored on the Property during the actual construction period of any Improvements to be made to the Property.
- (d) Condition Prior to Construction. The Property shall be kept in a neat, orderly and clean condition, free of all weeds, litter and debris, prior to the date of commencement of construction of the Improvements.
- (e) Condition During Construction. The Property shall be kept in a neat, orderly and clean condition during the period of any construction thereon.
- (f) Surface Condition After Construction. The homeowner's association or maintenance organization responsible for maintenance of landscaping on adjacent areas of the Project shall install and maintain landscaping consistent with the immediate area free of charge to Accipiter. The landscaping plan shall be submitted to the Owner (defined below) for approval. Owner's written approval shall not be unreasonably withheld, conditioned or delayed.
- (g) Compliance with Law. The Property shall comply with all laws, ordinances, codes, rules and regulations applicable to the ownership of the Property and the development and construction of improvements thereto, including, without limitation, all applicable dust control laws, ordinances, rules and regulations.
- (h) Maintenance. The Improvements (and any other Improvements approved in accordance with Section 1) on the Property shall at all times be kept in good condition and repair.
- (i) Protection from Damage. During the course of construction on the Property, Owner shall protect from damage by Owner, its agents, employees, contractors, invitees and licensees (collectively, "Permittees") (or immediately repair once damaged) all pavement, curbs, gutters, sidewalks, streets, shoulders, utility lines and appurtenances, grade stakes, surveyor monuments, landscaping, drainage facilities, hydrants, and other property within the Project, and shall keep all such property, and all pedestrian and road rights-of-way and drives, reasonably clean and clear of its equipment, building materials, dirt, debris and similar materials.
- (j) Temporary Occupancy and Temporary Buildings. No temporary buildings or structures of any kind shall be placed on the Property at any time.
- (k) Mineral Exploration. The Property shall not be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances of any kind.

- (l) Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.
 - (m) Signs. No exterior signs or advertising displays or devices of any type shall be permitted on the Property without the prior written approval of Declarant. No flags shall be displayed on the Property other than an American flag in accordance with Declarant's regulations therefor and applicable law.
 - (n) Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers and receptacle enclosures of a type, size and style which are approved in writing by Declarant. In no event shall such containers be maintained so as to be visible from any street or other property adjacent to the Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Property on a twice-weekly basis and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on the Property.
 - (o) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon the Property or any street in the Project, and no inoperable vehicle, including but not limited to vehicles with flat tires, may be stored or parked on the Property so as to be visible from any street or other property adjacent to the Property; provided, however, that the provisions of this Subsection shall not apply to emergency vehicle repairs.
3. Approval of Additional Covenants. No additional covenants, conditions, restrictions or easements may be recorded against the Property without the prior written approval of Declarant and Owner.
4. Subdivision of Property. The Property may not be further subdivided, separated, platted or rezoned without the prior written approval of Declarant.
5. Reservation of Easements.
- (a) Declarant hereby reserves for itself and grants to Owner and to the owners of portions of the Project adjacent to the Property, reciprocal easements of encroachment between the Property and adjacent portions of the Project, for the unintentional placement, or settling or shifting, of improvements constructed, installed or altered thereon. Such easement shall extend for a distance not to exceed two (2) feet, as measured from the common boundary. In no event shall an easement of encroachment exist or be created hereby if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

- (b) Owner shall cooperate in the granting of reasonable and customary non-exclusive easements to Declarant, other owners of portions of the Project and/or any governmental entity or utility company, for utility facilities to serve any property within the Project and for temporary rights of entry in connection with the construction of initial improvements on adjacent property so long as such easements do not interfere with the Permitted Use of the Property.
- (c) All work associated with the exercise of the easements described in this Section 6 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by such easement. Upon completion of the work, the person exercising the easement shall restore, at such person's sole cost and expense, any property damaged in connection with such work, to the extent reasonably possible, to substantially its condition prior to the commencement of the work, including without limitation any paving and landscaping improvements.
- (d) The Property is hereby subjected to a perpetual non-exclusive easement appurtenant to and for the benefit of the Project (i) for the purpose of storm water drainage and run off not inconsistent with the Permitted Use of the Property, which easement shall include without limitation the right to connect to existing storm water drainage channels, basins, lines or other facilities and to divert storm water runoff into such storm water drainage channels, basins, lines or other facilities at such points and in such manner as may be approved by the Declarant from time to time, and (ii) to permit the flow of storm water runoff over the Property to retention facilities outside the boundaries of the Property so long as it does not interfere with the Permitted Use of the Property. The foregoing easement shall be subject to any and all restrictions regarding quantity, rate and quality of discharge that the Declarant may hereafter impose or which may be imposed by law or any federal, state, county or municipality having jurisdiction over the Project.
- (e) Nothing contained in this Declaration shall be deemed to create any implied easements not otherwise expressly provided for herein.

6. Environmental Compliance.

- (a) Compliance. Owner shall comply, and shall ensure that all of its Permittees, guests and tenants comply, with any and all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like now or hereafter relating to or governing in any way the environmental condition of the Property or the presence of Hazardous Materials (defined below) on, in, under or affecting all or any portion of the Property including, without limitation, the statutes referenced in Subsection 7(b).
- (b) Definition. As used herein, the term "*Hazardous Material*" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local

governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) pesticides, (iv) polychlorinated biphenyls, (v) solvents, (vi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), (vii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (viii) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., (ix) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116, or (x) defined as an "Extremely Hazardous Substance" under Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002, et seq.

7. Term. All of the covenants, conditions, restrictions, assessments and other provisions of this Declaration shall remain in full force and effect for so long as the Vistancia Declaration remains in full force and effect (the "*Term*"), unless sooner terminated by Declarant pursuant to Section 11 below.
8. Remedies.
 - (a) Remedies Cumulative. The remedies specified in this Declaration shall be cumulative and in addition to all other remedies permitted at law or in equity, including without limitation specific performance and other injunctive relief and payment of any amounts due.
9. Runs with the Land. All of the covenants, conditions, restrictions and other provisions of this Declaration shall run with the Property and shall be binding upon the Property, the Owner, the Declarant, all persons or entities having or acquiring any right, title or interest in or to the Property or any part thereof, and their personal representatives, successors and assigns. By acceptance of any deed or by the acquiring of any right, title or interest in or to the Property or any portion thereof, each person or entity, for itself, its heirs, personal representatives, successors, transferees, grantees and assignees, binds itself and all such parties to all the covenants, conditions, restrictions and other provisions of this Declaration imposed on the Property or the Owner thereof by this Declaration.
10. Termination and Amendment. This Declaration may be terminated at any time only by a written instrument executed by Declarant and Owner. This Declaration may be amended at any time, or from time to time, only by a written instrument executed by Declarant and Owner. In no event shall any such termination or amendment be effective unless and until it is recorded in the Official Records of Maricopa County, Arizona.
11. Waiver. The waiver of, or failure to enforce, any breach or violation of this Declaration shall not be deemed to be an abandonment of any right or provision under this Declaration, nor shall it be deemed to be a waiver of the right to enforce any subsequent

breach or violation of this Declaration, regardless of whether any person affected thereby had knowledge of the breach or violation.

12. Severability; Interpretation; Gender. Invalidation of any one of the covenants, conditions, restrictions or other provisions of this Declaration by judgment or court order shall in no way affect any other provisions and such other provisions shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of sections and subsections of this Declaration are for convenience only and shall not affect the interpretation hereof.
13. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is recorded in the Official Records of Maricopa County, Arizona.
14. Notices. All notices, consents, approvals and other communications to Declarant provided for herein or given to Declarant in connection herewith shall be validly given, made, delivered or served if in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to:

Vistancia, LLC
c/o Sunbelt Holdings
6720 North Scottsdale Road, Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis Smith

with required copy to:

Storey & Burnham PLC
3030 E. Camelback Road, Suite 265
Phoenix, AZ 85016
Attention: Lesa J. Storey

or to such other address as Declarant may from time to time designate in a written instrument recorded in the Official Records of Maricopa County, Arizona.

All notices, consents, approvals and other communications to Owner provided for herein or given to Owner in connection herewith shall be validly given, made, delivered or served if in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to the address of the Property or to such other address as

Owner may designate by written notice delivered to Declarant from time to time in accordance with this Section.

15. Enforcement. This Declaration may be enforced only by Declarant, and no other person shall have any right or cause of action hereunder.

16. Definitions.

(a) Declarant Definition. Notwithstanding any contrary provision of this Declaration, as used herein, the term "**Declarant**" shall mean Vistancia, LLC, a Delaware limited liability company, its successors, or any person or entity to whom it may expressly assign its rights and interest hereunder (which assignment shall be evidenced by an instrument recorded in the Official Records of Maricopa County, Arizona).

(b) Owner Definition. As used herein, the term "**Owner**" shall mean the record owner at the subject point in time of fee simple title to the Property other than Declarant, whether or not subject to any mortgage, deed of trust or other security instrument, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to the Property is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

VISTANCIA, LLC, a Delaware limited liability company,
formerly known as Shea Sunbelt Pleasant Point, LLC, a
Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona
limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, Chief
Operating Officer

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, the Managing Member in Vistancia, LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

My Commission Expires:

EXHIBIT A
(Legal Description of Property)



A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

October 26, 2005
Vistancia, LLC
Northern Parcel
Page 1 of 1

EXHIBIT A



LEGAL DESCRIPTION

A parcel lying within the Northwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the west quarter corner (GLO brass cap) of said Section 14 from which point the southwest corner (GLO brass cap) thereof bears S 00°14'16" W a distance of 2640.53 feet;

Thence N 88°28'55" E a distance of 278.68 feet to the POINT OF BEGINNING;

Thence N 18°30'04" W a distance of 41.13 feet;

Thence N 72°18'09" E a distance of 40.00 feet to a point on the west line of Tract "K", as shown on the Map of Dedication for Vistancia Boulevard, Lone Mountain Road, Westland Road and Creosote Drive, recorded in Book 721, Page 11, Maricopa County Records, the beginning of a non-tangent curve to the left, from which point the radius point bears N 72°18'09" E;

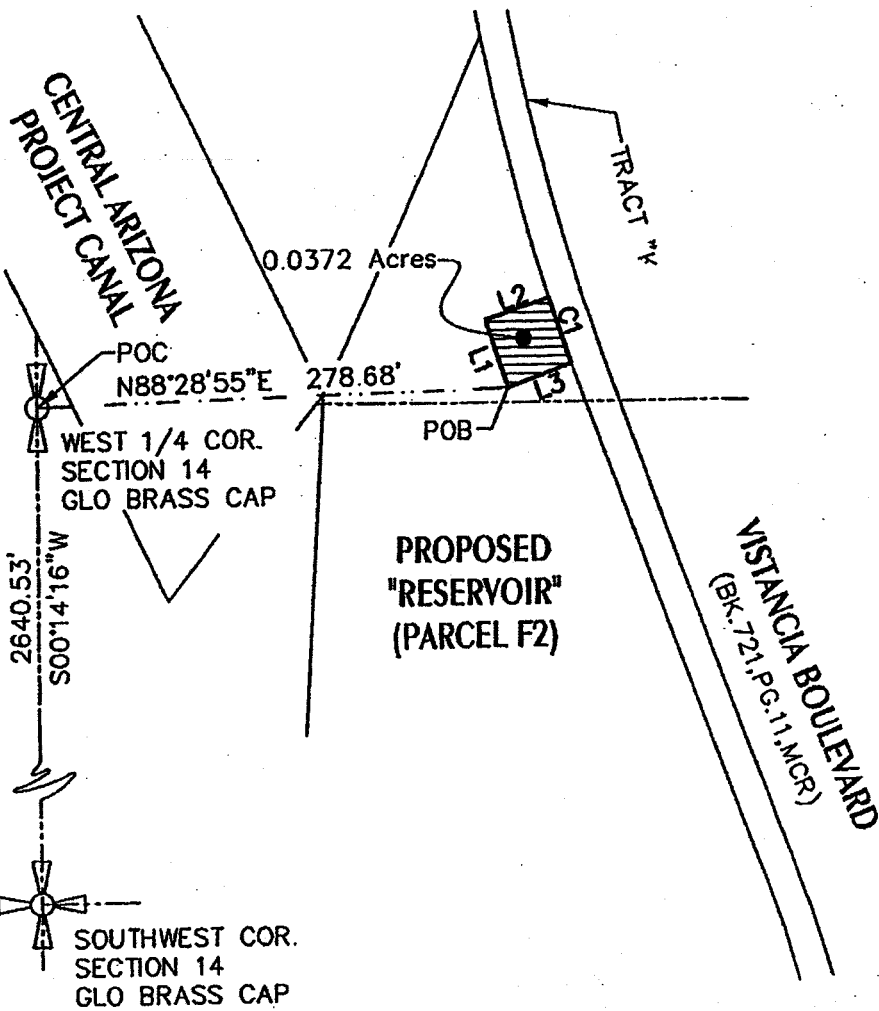
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

Thence S 70°41'42" W, leaving said west line of Tract "K", a distance of 40.00 feet to the POINT OF BEGINNING.

Said parcel contains 0.0372 acres of land, more or less.

The Basis of Bearing for the above description is S 00°14'16" W for the west line of the Southwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, as shown on an Amended Results of Survey recorded Book 632, Page 24, Maricopa County Records.

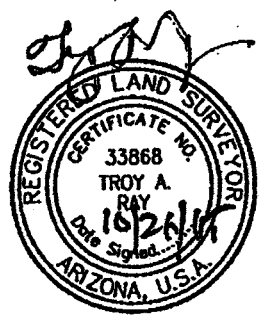
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SCALE:
 1"=100'
 NW 1/4
 SEC 14
 T 5 N
 R 1 W

LINE TABLE		
LINE	BEARING	LENGTH
L1	N18°30'04"W	41.13'
L2	N72°18'09"E	40.00'
L3	S70°41'42"W	40.00'

CURVE TABLE				
CURVE	DELTA	RADIUS	CH. BEARING	LENGTH
C1	1°36'27"	1426.00'	S18°30'04"E	40.01'



Vistancia

Stanley Consultants A Stanley Group Company
 Engineering, Environmental and Construction Services - Worldwide

When Recorded, Mail to:

Martin A. Aronson
Morrill & Aronson, P.L.C.
Suite 340
One East Camelback Road
Phoenix, AZ 85012-1648

EXHIBIT "5F"

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, VISTANCIA, LLC, a Delaware limited liability company ("*Grantor*"), does hereby convey to ACCIPITER COMMUNICATIONS, INC., a Nevada corporation ("*Grantee*"), the following described real property (the "*Property*") situated in Maricopa County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO AND BY
THIS REFERENCE MADE A PART HEREOF

SUBJECT TO: current taxes; patent reservations; all items shown on Exhibit "B" attached hereto and by this referenced made a part hereof.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be executed this ___ day of _____, 2005.

VISTANCIA, LLC, a Delaware limited liability company

By: SUNBELT PLEASANT POINT INVESTORS, LLC,
an Arizona limited liability company, its Member

By: SUNBELT PP, LLLP, an Arizona limited liability
limited partnership, its Manager

By: SUNBELT HOLDINGS MANAGEMENT,
INC., an Arizona corporation, its General
Partner

By: _____

Curtis E. Smith

Its: Executive Vice President

STATE OF ARIZONA)
) Ss:
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____ 2005, by Curtis E. Smith, the Executive Vice President of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, LLC, an Arizona limited liability company, the Member of Vistancia, LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

My Commission Expires:



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

October 26, 2005
Vistancia, LLC
Northern Parcel
Page 1 of 1

EXHIBIT A



LEGAL DESCRIPTION

A parcel lying within the Northwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the west quarter corner (GLO brass cap) of said Section 14 from which point the southwest corner (GLO brass cap) thereof bears S 00°14'16" W a distance of 2640.53 feet;

Thence N 88°28'55" E a distance of 278.68 feet to the POINT OF BEGINNING;

Thence N 18°30'04" W a distance of 41.13 feet;

Thence N 72°18'09" E a distance of 40.00 feet to a point on the west line of Tract "K", as shown on the Map of Dedication for Vistancia Boulevard, Lone Mountain Road, Westland Road and Creosote Drive, recorded in Book 721, Page 11, Maricopa County Records, the beginning of a non-tangent curve to the left, from which point the radius point bears N 72°18'09" E;

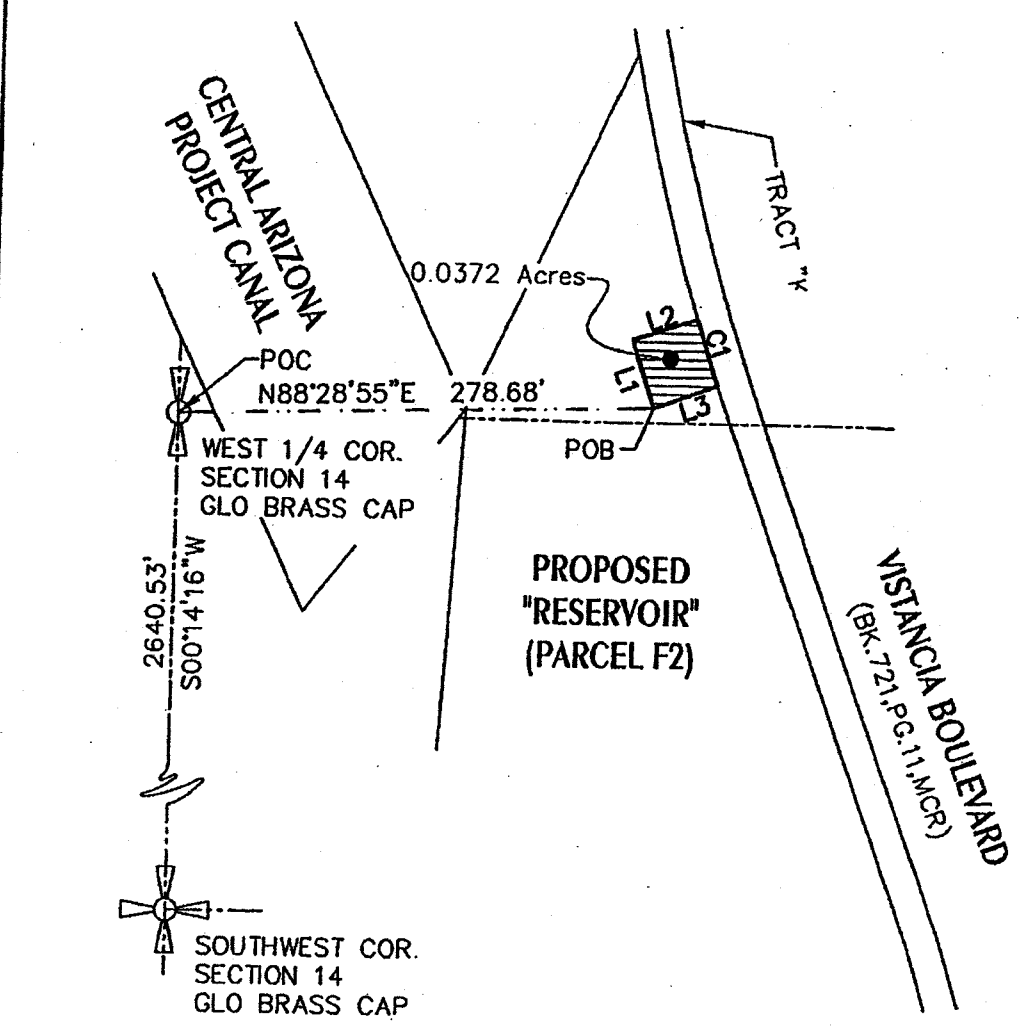
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

Thence S 70°41'42" W, leaving said west line of Tract "K", a distance of 40.00 feet to the POINT OF BEGINNING.

Said parcel contains 0.0372 acres of land, more or less.

The Basis of Bearing for the above description is S 00°14'16" W for the west line of the Southwest Quarter of Section 14, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, as shown on an Amended Results of Survey recorded Book 632, Page 24, Maricopa County Records.

Q:\16048\Survey\Village F Plats\VST-F2\Documents\Northern Parcel.doc



SCALE:
 1"=100'
 NW 1/4
 SEC 14
 T 5 N
 R 1 W

LINE TABLE		
LINE	BEARING	LENGTH
L1	N18°30'04"W	41.13'
L2	N72°18'09"E	40.00'
L3	S70°41'42"W	40.00'

CURVE TABLE				
CURVE	DELTA	RADIUS	CH. BEARING	LENGTH
C1	1°36'27"	1426.00'	S18°30'04"E	40.01'



Vistancia


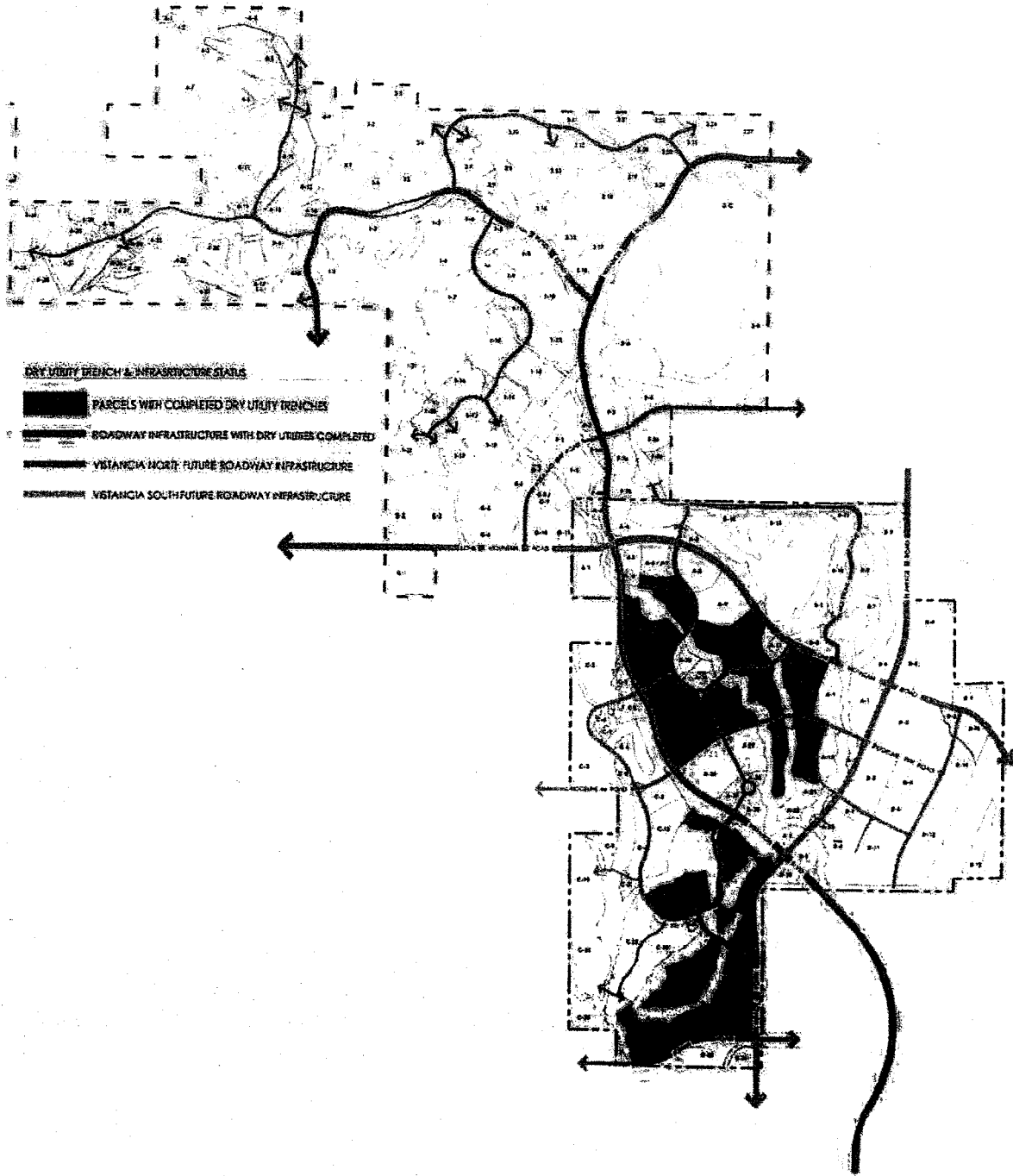

 A Stanley Group Company
Stanley Consultants INC Engineering, Environmental and Construction Services - Worldwide

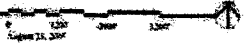
EXHIBIT B
(North Parcel)

1. Taxes for the full year of 2005.
(The first half is due October 1, 2005 and is delinquent November 1, 2005.
The second half is due March 1, 2006 and is delinquent May 1, 2006.)
2. Reservations or Exceptions in Patents, or in Acts authorizing the issuance thereof.
3. The right to enter upon said land and prospect for and remove all coal, oil, gas, minerals or other substances, as reserved in the Patent to said land.
4. Water rights, claims or title to water, whether or not shown by the public records.
5. The terms and provisions contained in the document entitled "Development and Annexation Agreement – White Peak Ranch and Lakeland Village" recorded October 24, 2001 as 2001-986718 of Official Records.
6. All matters as set forth in Notice of Formation of Vistancia Community Facilities District, recorded October 23, 2002 as 2002-1103741 of Official Records.
7. All matters as set forth in Resolution Ordering and Declaring Formation of Vistancia Community Facilities District, recorded October 23, 2002 as 2002-1103742 of Official Records.
8. All matters as set forth in General Plan for the Proposed Vistancia Community Facilities District, recorded October 23, 2002 as 2002-1103743 of Official Records.
9. All matters as set forth in District Development Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), recorded October 23, 2002 as 2002-1103744 of Official Records.
10. Any liens, liabilities, obligations or assessments imposed on said land by reason of the inclusion within the Vistancia Community Facilities District.
(All assessments due and payable are paid)
11. The terms and provisions contained in the document entitled "City Agreement" recorded December 23, 2002 as 2002-1387298 of Official Records.
12. The terms and provisions contained in the document entitled "Sight Visibility Restriction" recorded September 25, 2003 as 2003-1343440 of Official Records.



VISTANCIA

TRENCH CLOSURE MAP



GREY RICEFT
landscape architecture, community design
2009-2010
www.greyriceft.com

Vistancia, LLC
&
COXCOM, INC.
RESIDENTIAL SERVICE AGREEMENT

EXHIBIT "7"

This RESIDENTIAL SERVICE AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2005, between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this Agreement), and Vistancia, LLC, a Delaware limited liability company (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer and Cox have previously entered into that certain Amended and Restated Co-Marketing Agreement dated September 25, 2003, relating to the master planned community known as Vistancia (the "CMA").
- B. Whereas the Master Developer and Cox now desire to terminate, supersede, and replace in its entirety the CMA, all in accordance with and as hereinafter provided in this Agreement.
- C. Whereas the Master Developer is the beneficial owner (or the former beneficial owner, as to property that has been sold to third parties) of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- D. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development.
- E. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- F. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").
- G. Whereas this Agreement is intended by the parties to apply only to, and this Agreement shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows, and the CMA is hereby terminated in its entirety, it being agreed that the CMA shall be of no further force or effect and is replaced and superceded in its entirety by this Agreement:

AGREEMENT

1. **Definitions.** The following terms shall have the following meanings for all purposes under this Agreement:
- (a) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (b) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (c) "Agreement Date" means the date first set forth in this Agreement.
 - (d) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (e) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
 - (f) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
 - (g) "Contractors" means contractors, subcontractors, material providers and suppliers.
 - (h) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
 - (i) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
 - (j) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
 - (k) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
 - (l) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
 - (m) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
 - (n) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a

development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.

- (o) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (p) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (q) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (r) "Plat" shall mean and refer collectively to all of the recorded subdivision plats, maps of private tract dedication, and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof.
- (s) "Platted Easement Area" shall mean and refer to all of the following, collectively: (a) all easement areas designated as "M.U.E." or "Multi-Use Easement" on the Plats recorded prior to recordation of the RPUE, which easement areas have been converted to public utilities easement (PUE) areas pursuant to the RPUE, (ii) all easement areas designated as "PUE" or "Public Utilities Easement" on the Plat recorded following recordation of the RPUE, and (iii) the streets (whether public or private) designated on the Plats.
- (t) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit C, that enable Communication Services to be properly delivered to Customer Premises Equipment.
- (u) "RPUE" means that certain Roadway and Public Utility Easement dated ____, 2005 and recorded in the Office of the Maricopa County Recorder at Instrument No. _____.
- (v) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (w) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.

- (x) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (y) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (z) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (aa) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (bb) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital C.
- (cc) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized pursuant to the Master Declaration, its successors and assigns.

2. **Term.**

The initial term of this Agreement (the "Initial Term") shall be for a period of 20 years, which commenced on September 25, 2003. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 9 and 10 of this Agreement.

3. **License and Access Rights.**

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer (or by a Neighborhood Builder, with the Master Developer's consent) of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication and Maps of Private Tract Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement.

- (b) **Grant of Access.** The parties agree that the following terms shall apply to any rights granted to Cox pursuant to the RPUE and/or any Plats recorded after recordation of the RPUE and this Agreement:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
 - (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under this Agreement have the right to enter upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
 - (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the RPUE, any Plat or this Agreement have the right to enter into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
 - (iv) During the Development Process, the Master Developer shall establish and delineate (or cause to be established and delineated) Platted Easement Areas sufficient to allow Cox to fulfill its obligations hereunder. In the event that the provisions of this Agreement and the RPUE (or any future recorded Plat, as to areas of Vistancia not platted at the time of recordation of the RPUE) are not sufficient to allow Cox to fulfill its obligations hereunder, Master Developer shall use commercially reasonable efforts to grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary for Cox to fulfill said obligations. In the event that Master Developer does not fulfill its obligations in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's obligations hereunder and/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such rights.
 - (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that Cox's rights are non-exclusive and the Platted Easement Area may be utilized by other, even competitive, service providers.
- (c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 5(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) **Post-Agreement Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).

- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement.

4. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this Agreement, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit D:
 - (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (b) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.
- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable

Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 5(d) and 6(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 5(d) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this Agreement, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

- (d) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (e) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (f) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (g) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (h) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 10, but shall not have the right to seek remedies of specific performance or damages for default.
- (i) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to

Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

- (j) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall attempt to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this Agreement pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 5(d), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for

any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

6. **Technology Facilities Cooperation & Coordination by Cox.**

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties.

7. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

8. Representations and Warranties

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
 - (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.

(iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(iv) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this Agreement.

(b) **By Cox.** Cox hereby represents and warrants to Vistancia as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(v) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

9. Default and Remedies.

(a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 10:

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain

reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 11. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 11.

- (c) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.
- (d) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.
- (e) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 11.
- (f) **Monetary Damages.** The non-defaulting party shall have no right to obtain monetary damages except as expressly provided in this Section 9.
- (g) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

10. Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 9, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
 - (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) Cox shall continue to have the rights of access to each SFR and MFU provided by the RPUE and all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the RPUE or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration;

- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia.

11. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

12. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this Agreement and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this Agreement), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

13. Non-Exclusive.

Nothing in this Agreement shall be construed to grant Cox any exclusive rights to provide Communication Services or Technology Facilities.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Residential Service Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

COXCOM, INC., a Delaware corporation, d/b/a COX COMMUNICATIONS Phoenix

By: _____
J. Steven Rizley
General Manager and VP

Lender Consent:

The undersigned hereby consents to the foregoing Residential Service Agreement, as required by the terms of the loan documents evidencing the loan to Vistancia, LLC, a Delaware limited liability company made by Residential Funding Corporation, a Delaware corporation, whose interest has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation:

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

Access Entity Consent:

The undersigned, as a party to the CMA (as such term is defined in the foregoing Residential Service Agreement), hereby consents to the termination of the CMA as provided in the foregoing Residential Service Agreement.

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

10.3 Technology Services.

10.3.1 Wiring Specifications. Buyer shall observe the Pre-Wire Specifications set forth in Schedule 2 attached hereto and shall install the material referenced therein, in accordance therewith, in each home constructed by Buyer on the Property, all at the sole cost and expense of Buyer.

10.3.2 Third Party Beneficiaries. Each and every provider of communication or telecommunication services to the Project is intended to be a third-party beneficiary of all of the foregoing provisions of this paragraph 10.3 and, as such, shall have the right to enforce this paragraph 10.3.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement, and Schedule 2 would consist of the pre-wiring specifications set forth in Exhibit C to this Agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cable Television/Internet Access Services Pre-Wire Specifications Vistancia Residential Pre-Wiring Guidelines

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT D

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards "Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT E

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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**Vistancia, LLC
&
COXCOM, INC.
COMMERCIAL BUILDING SERVICE AGREEMENT**

EXHIBIT "8"

This COMMERCIAL BUILDING SERVICE AGREEMENT ("Agreement") is entered into this _____ day of _____, 2005 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, and Vistancia, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached hereto.

RECITALS

- A. Whereas Master Developer is the beneficial owner (or the former beneficial owner, as to property that has been sold to third parties) of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas the parties had previously entered into an Amended and Restated Property Access Agreement dated September 25, 2003 (the "PAA"), which they now desire to terminate and replace with this Commercial Building Service Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows and the PAA is hereby terminated in its entirety, it being agreed that the PAA shall be of no further force or effect and is replaced and superseded in its entirety by this Agreement:

AGREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Agreement Date" means the date first set forth in this Agreement.
- (b) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (c) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.

- (d) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (e) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (f) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (g) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (h) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (i) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (j) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and assigns.
- (k) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (l) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (m) "Plat" means a map of dedication, map of private tract dedication, parcel map, or subdivision plat recorded by Master Developer or with the consent of Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (n) "RPUE" means that certain Roadway and Public Utility Easement dated _____, 2005 and recorded in the Office of the Maricopa County Recorder at Instrument No. _____.
- (o) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.

- (p) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (q) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (r) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (s) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (t) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (u) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (v) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (w) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, which commenced on September 25, 2003. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are

subject to early termination as provided in Sections 9 and 10 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer (or by a third party developer with the Master Developer's consent) of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication and Maps of Private Tract Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Access.** The parties agree that the following terms shall apply to any rights granted to Cox pursuant to the RPUE and/or any Plats recorded after recordation of the RPUE and this Agreement:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate (or cause to be established and delineated) Platted Easement Areas sufficient to allow Cox to fulfill its obligations hereunder. In the event that the provisions of this Agreement and the RPUE (or any future recorded Plat, as to areas of Vistancia not platted at the time of recordation of the RPUE) are not sufficient to allow Cox to fulfill its obligations hereunder, Master Developer shall use commercially reasonable efforts to grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary for Cox to fulfill said obligations. In the event that Master Developer does not fulfill its obligations in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's obligations hereunder and/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such rights.
 - (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that Cox's rights are non-exclusive and the Platted Easement Area may be utilized by other, even competitive, service providers.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement.

4. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit B.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (b) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (c) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia pursuant to the construction policies and tariffs of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable

Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit A. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 5(c) and 6(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 5(c) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
 - (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
 - (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (d) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 10, but shall not have the right to seek remedies of specific performance or damages for default.

- (e) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (f) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit A and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 5(c), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

6. Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit A for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. Without limitation of the foregoing, Cox

shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues with respect to Buildings within Vistancia.

7. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit C.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it had fee title to the Vistancia property as of the commencement of the Initial Term, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

8. **Representations and Warranties**

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.

- (b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

9. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 10 with respect to the default that has occurred:
 - (i) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 11. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 11.
- (c) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.
- (d) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.

- (e) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 11.
- (f) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 9.
- (g) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

10. Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 9, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
 - (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) Cox shall continue to have the rights of access to, each Building provided by the RPUE and all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the RPUE (and/or the applicable Plat). No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration.

11. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to

the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

12. Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this Agreement and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this Agreement), except as provided in subsections (b) or (c).

- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

13. Non-Exclusive.

Nothing in this Agreement shall be construed to grant Cox any exclusive rights to provide Communication Services or Technology Facilities.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the

prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

- (l) **Additional Documents.** Each party hereto shall execute and deliver an such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Property Access Agreement as of the date first written above.

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Coxcom Inc., a Delaware corporation, d/b/a Cox Communications Phoenix

By: _____
J. Steven Rizley
General Manager and VP

Address: 20401 North 29th Avenue
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: General Counsel

Lender Consent:

The undersigned hereby consents to the foregoing Commercial Building Service Agreement, as required by the terms of the loan documents evidencing the loan to Vistancia, LLC, a Delaware limited liability company made by Residential Funding Corporation, a Delaware corporation, whose interest has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation:

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

Access Entity Consent:

The undersigned, as a party to the PAA (as such term is defined in the foregoing Commercial Building Service Agreement), hereby consents to the termination of the PAA as provided in the foregoing Commercial Building Service Agreement.

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

EXHIBIT A

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network: To Be Determined
- 2) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 3) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT B
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

- (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT C
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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MORRILL & ARONSON, P.L.C.
ATTORNEYS AT LAW
ONE EAST CAMELBACK
SUITE 340
PHOENIX, ARIZONA 85012
TELEPHONE (602) 263-8993

COPY

NOV - 8 2005



MICHAEL K. WEAVER, CLERK
B. S. SUTCLIFF, DEPUTY CLERK

Martin A. Aronson (009005)
William D. Cleaveland (015000)
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation,

Plaintiff,

v.

COX ARIZONA TELCOM, L.L.C. an
Arizona limited liability company;
COXCOM, INC., A DELAWARE
CORPORATION (FN), a Delaware
corporation; COX COMMUNICATIONS,
INC., a Delaware corporation; SHEA
SUNBELT PLEASANT POINT, L.L.C.,
a/k/a VISTANCIA L.L.C., a Delaware
limited liability company; VISTANCIA
COMMUNICATIONS, L.L.C.; an Arizona
limited liability company; CITY OF
PEORIA, an Arizona municipal corporation;
DEBRA STARK, in her official capacity as
the Director of the Community Development
Department of the City of Peoria; JOHN
DOES I-X; JANE DOES I-X; ABC
CORPORATIONS I-X; and XYZ
PARTNERSHIPS or OTHER ENTITIES I-
X;

Defendants.

Cause No. CV2005-010727

**PLAINTIFF'S NOTICE OF
DISMISSAL OF CERTAIN
DEFENDANTS WITH
PREJUDICE**

Plaintiff, by and through undersigned counsel, pursuant to Rule 41(a)(1)(A),
Ariz.R.Civ.P., hereby submits this Notice of Dismissal with prejudice of only the following

1 Defendants, Cox Arizona Telcom, L.L.C., CoxCom, Inc., Cox Communications, Inc., Shea
2 Sunbelt Pleasant Point, L.L.C., a/k/a Vistancia L.L.C., and Vistancia Communications, L.L.C.,
3 in the above-captioned lawsuit. No adverse party has appeared or otherwise filed or served an
4 Answer or Motion in this case. Therefore, dismissal with prejudice upon this Notice is
5 appropriate under Rule 41(a).

6 This Notice of Dismissal of Certain Defendants With Prejudice together with a separate
7 Notice of Dismissal of Certain Defendants Without Prejudice (filed on this same date) dismisses
8 this action as to all Defendants.

9 RESPECTFULLY SUBMITTED this 8th day of November 2005.

10 MORRILL & ARONSON, P.L.C.

11 By William D. Cleaveland
12 Martin A. Aronson
13 William D. Cleaveland
14 One East Camelback Road, Suite 340
15 Phoenix, AZ 85012-1648
16 Attorneys for Plaintiff

17 ORIGINAL of the foregoing
18 filed with the Clerk of the Court and
19 COPY hand-delivered this 8th
20 day of November, 2005 to:

21 The Honorable Pendleton Gaines
22 Maricopa County Superior Court
23 201 West Jefferson Street
24 Phoenix, Arizona 85003

25 Synda Kogutkiewicz

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MORRILL & ARONSON, P.L.C.
ATTORNEYS AT LAW
ONE EAST CAMELBACK
SUITE 340
PHOENIX, ARIZONA 85012
TELEPHONE (602) 263-8993

COPY

NOV - 8 2005



MICHAEL K. JEANES, CLERK
H. SNEEDSON, DEPUTY CLERK

Martin A. Aronson (009005)
William D. Cleaveland (015000)
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation,

Plaintiff,

v.

COX ARIZONA TELCOM, L.L.C. an
Arizona limited liability company;
COXCOM, INC., A DELAWARE
CORPORATION (FN), a Delaware
corporation; COX COMMUNICATIONS,
INC., a Delaware corporation; SHEA
SUNBELT PLEASANT POINT, L.L.C.,
a/k/a VISTANCIA L.L.C., a Delaware
limited liability company; VISTANCIA
COMMUNICATIONS, L.L.C.; an Arizona
limited liability company; CITY OF
PEORIA, an Arizona municipal corporation;
DEBRA STARK, in her official capacity as
the Director of the Community Development
Department of the City of Peoria; JOHN
DOES I-X; JANE DOES I-X; ABC
CORPORATIONS I-X; and XYZ
PARTNERSHIPS or OTHER ENTITIES I-
X;

Defendants.

Cause No. CV2005-010727

**PLAINTIFF'S NOTICE OF
DISMISSAL OF CERTAIN
DEFENDANTS WITHOUT
PREJUDICE**

Plaintiff, by and through undersigned counsel, pursuant to Rule 41(a)(1)(A),
Ariz.R.Civ.P., hereby submits this Notice of Dismissal without prejudice of only the following

1 Defendants, the City of Peoria and Debra Stark, in her official capacity as the Director of the
2 Community Development Department of the City of Peoria, in the above-captioned lawsuit. No
3 adverse party has appeared or otherwise filed or served an Answer or Motion in this case.
4 Therefore, dismissal without prejudice upon this Notice is appropriate under Rule 41(a).

5 RESPECTFULLY SUBMITTED this 8th day of NOVEMBER, 2005.

6 MORRILL & ARONSON, P.L.C.

7 By William D. Cleaveland
8 Martin A. Aronson
9 William D. Cleaveland
10 One East Camelback Road, Suite 340
Phoenix, AZ 85012-1648
Attorneys for Plaintiff

11 ORIGINAL of the foregoing
12 filed with the Clerk of the Court and
13 COPY hand-delivered this 8th
day of November, 2005 to:

14 The Honorable Pendleton Gaines
15 Maricopa County Superior Court
201 West Jefferson Street
Phoenix, Arizona 85003

16 Synda Kogutkiewicz
17
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER

Chairman

WILLIAM A. MUNDELL

Commissioner

MARC SPITZER

Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

IN THE MATTER OF THE FORMAL)	DOCKET NO. T-03471A-05-0064
COMPLAINT OF ACCIPITER)	
COMMUNICATIONS, INC. AGAINST)	
VISTANCIA COMMUNICATIONS,)	
L.L.C., SHEA SUNBELT PLEASANT)	
POINT, L.L.C., AND COX ARIZONA)	
TELCOM, LLC)	

NOTICE OF WITHDRAWAL WITH PREJUDICE

Complainant Accipiter Communications, Inc., by and through undersigned counsel, hereby submits this Notice of Withdrawal with Prejudice from the above-captioned proceeding. Per a Settlement Agreement between the Parties (not including

ACC Staff), Accipiter Communications, Inc., has fully released with prejudice all its claims set forth against the named Respondents in this docket.

RESPECTFULLY SUBMITTED this 8th day of November, 2005.

MORRILL & ARONSON, P.L.C.

By William D. Cleaveland

Martin A. Aronson
William D. Cleaveland
One East Camelback Road, Suite 340
Phoenix, AZ 85012-1648
Attorneys for Accipiter Communications, Inc.
Telephone: (602) 263-8993
Fax: (602) 285-9544

ORIGINAL and 13 copies of the foregoing filed this 8th day of November, 2005 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered this 8th day of November, 2005 to:

Dwight D. Nodes, Esq.
Assistant Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher C. Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 8th day of November, 2005 to:

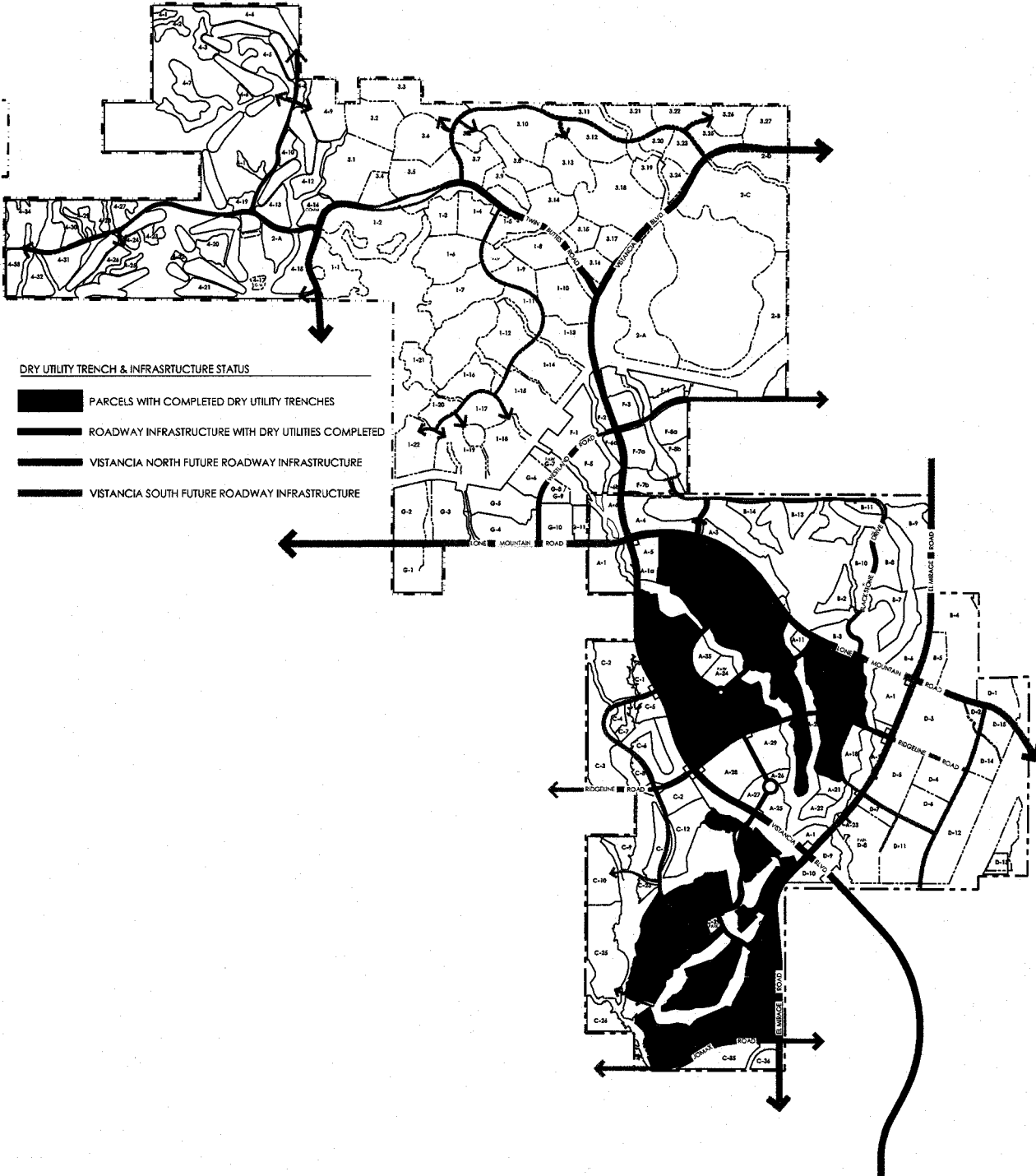
Michael W. Patten, Esq.
Roshka Heyman & DeWulf, P.L.C.
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004
Attorneys for Cox Arizona Telcom, LLC

Michael M. Grant, Esq.
Gallagher & Kennedy, PA
2575 E. Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Shea and Vistancia Communications



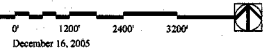
ATTACHMENT

IJ-2



TRENCH CLOSURE MAP

As Of December 1, 2005



GREY PICKETT
 landscape architecture | community design
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE FORMAL)
COMPLAINT OF ACCIPITER) DOCKET NO. T-03471A-05-0064
COMMUNICATIONS, INC., AGAINST)
VISTANCIA COMMUNICATIONS, L.L.C.,)
SHEA SUNBELT PLEASANT POINT, L.L.C.,)
AND COX ARIZONA TELCOM, LLC.)

DIRECT TESTIMONY
OF
LINDA TRICKEY
ON BEHALF OF
COX ARIZONA TELCOM, L.L.C.

April 5, 2006

1 **Q. Please state your name, address, and employment.**

2 A. My name is Linda Trickey. I have been employed by Cox Communications, Inc. since
3 about September 2002. My title is Senior Counsel. My business address is 1400 Lake
4 Hearn Drive, Atlanta, Georgia.

5
6 **Q. What is the purpose of your testimony?**

7 A. This Commission has raised some questions regarding certain co-marketing, property
8 access, and licensing agreements (the "Agreements")¹ entered into by Cox, Shea Sunbelt
9 Pleasant Point, LLC ("Shea Sunbelt"), and/or Vistancia Communications, L.L.C.
10 ("Vistancia Communications") relating to the Vistancia master planned community
11 ("Vistancia") located in the City of Peoria. (Shea Sunbelt and Vistancia Communications
12 will collectively be referred to as "Shea".) My testimony provides information regarding
13 my communications with Shea's representatives relating to the contract documentation.
14

15 **I. SUMMARY OF TESTIMONY**

16 **Q. Would you please summarize your testimony?**

17 A. In the Fall of 2002, I provided in-house legal assistance to Cox personnel in Arizona to
18 document a preferred provider arrangement between Cox and Shea relating to the
19 Vistancia community. My testimony is intended to inform the Commission about my
20 conversations with Shea's legal counsel during those negotiations. Although I would like
21 to be able to inform the Commission about my communications with Cox personnel, I
22 cannot do so because those communications are covered by the attorney-client privilege,
23

24 ¹ Specifically, the Agreements are: (1) Co-Marketing Agreement dated April 8, 2003 (the "Co-Marketing
25 Agreement"); (2) Property Access Agreement dated April 8, 2003 (the "Property Access Agreement"); (3) Amended
26 and Restated Co-Marketing Agreement dated September 25, 2003 (the "Restated Co-Marketing Agreement"); (4)
27 Amended and Restated Property Access Agreement dated September 25, 2003 (the "Restated Property Access
Agreement"); (5) Non-Exclusive License Agreement dated December 31, 2003, relating to the Restated Property
Access Agreement ("NELA-1"); (6) Non-Exclusive License Agreement dated December 31, 2003 relating to the
Restated Co-Marketing Agreement ("NELA-2"). These agreements are attached as LT-1 through LT-6 of my
testimony.

1 and disclosure of those communications would constitute waiver of the privilege. As a
2 matter of policy, Cox does not waive the attorney-client privilege.

3
4 Shortly after I first arrived at Cox, I was assigned responsibility for assisting with the
5 Vistancia contract documentation. I had not previously handled any real estate matters and
6 did not have any experience with preferred provider agreements. My role was to review
7 and possibly draft contract language; my role was not to negotiate the business deal. The
8 latter role was handled by system personnel.

9
10 Starting in the Fall of 2002, I received drafts of the Vistancia agreements and engaged in
11 communications with Shea's in-house counsel. I recall only generally that I reviewed
12 residential and commercial draft agreements during the Fall of 2002. The agreements
13 provided that Cox would build the extensive infrastructure necessary to provide
14 telecommunications services to residential and commercial customers in Vistancia, that
15 Shea would make a \$ 2 million capital contribution to Cox to help defray the substantial
16 construction expenses, that Cox would have only non-exclusive access rights to easements
17 in Vistancia, and that Shea would provide exclusive marketing of Cox's services in
18 Vistancia in exchange for revenue sharing based on market penetration.

19
20 I recall that, at the end of 2002, I understood that the deal was fully negotiated and that the
21 agreements were largely completed. However, in early 2003 I learned that Shea was
22 proposing new draft agreements, and I had several communications with Shea's in-house
23 counsel, Lesa Storey, about the new agreements. I understood that Lesa was an
24 experienced real estate lawyer. She always presented herself as forthcoming with me
25 about the terms of the deal.

26
27

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Based on my communications with Lesa, I understood that Shea wanted to obtain from the
2 City of Peoria what was called a multi-use easement ("MUE"). I understood from Lesa
3 that a MUE would allow Shea's access entity to control access to Vistancia and that MUEs
4 are new to Arizona but are legally used in other parts of the country. I recall generally that
5 the new agreements drafted by Shea added and revised language of the original draft
6 agreements. I recall understanding from Lesa that Shea believed the changes were
7 necessary to effectuate its business intention of using the MUE structure. I also recall that
8 the new agreements expressly provided only for non-exclusive access by Cox to Vistancia.

9
10 One of the changes that Shea made in the new agreements was to add a section regarding
11 "most favored nation" rights. I recall that I was uncertain as to what Shea intended by this
12 language and asked Lesa for clarification. I recall generally that Lesa explained that this
13 language imposed no real obligation on Cox and served to afford a competitively level
14 playing field, and I understood that it was one of the ways Shea had determined to use its
15 MUE. In addition, I believe that Lesa or one of the developer's representatives
16 communicated that the terms of the revised agreements would not change the substance of
17 the preferred provider arrangement that Cox had already negotiated with Shea relating to
18 Vistancia.

19
20 Although I know that I had other communications with Lesa during the contract
21 negotiations, I do not recall many details about those communications. I recall only
22 generally that Lesa explained that the purpose of the restated agreements was to provide
23 record notice of the access requirements for Vistancia and that Shea needed to structure the
24 deal as reflected in the restated agreements and the licensing agreements in order to
25 effectuate Shea's business purposes. As stated, I recall having received assurances from
26 Lesa that the MUE arrangement has been used legally in other locations.

27

1 I recall understanding from my conversations with Lesa in the Fall of 2003 that a company
2 called Accipiter, with which I was not familiar at the time, might challenge Shea's use of
3 the MUE structure. It is not at all surprising or cause for concern that a property-rights
4 structure being used for the first time in Arizona might be challenged in court. Given that
5 the MUE structure had been found to be legal in other parts of the country, as Lesa had
6 assured me, it would seem to be a business decision for Shea to make as to whether it
7 wanted to defend the MUE property-rights structure in court. I recall understanding from
8 Lesa that Shea wanted to pursue the MUE structure as a business matter.

9
10 I do not recall having any communications with Lesa, or with anyone else associated with
11 Shea or with any Shea entity, discussing that the Vistancia contracts would prevent or
12 restrict competition within the Vistancia community. I believe that I would recall any such
13 discussions, and believe that no such discussions occurred. It is my understanding that
14 Cox does not enter into contracts unless they provide for non-exclusive access rights.

15
16 **II. TESTIMONY REGARDING NEGOTIATIONS WITH SHEA**

17 **Q. Please briefly describe your work history.**

18 A. I began practicing law in 1989 working as a litigation associate in a Dallas law firm. In
19 1992, I joined GTE as in-house counsel. For the first few years, I primarily handled
20 employment litigation. In about 1995, I transitioned to handling legal work for operations.
21 In about September 2002, I joined Cox Communications in Atlanta. My title at the time
22 was Corporate Counsel.

23
24 **Q. When did you first become involved with Vistancia?**

25 A. Shortly after I arrived at Cox, I was assigned with the task of assisting in contract
26 documentation for Vistancia. I was not familiar with real estate matters or with preferred
27 provider agreements.

1 **Q. Please explain what you recall about your involvement with contract documentation**
2 **for Vistancia during the fall of 2002.**

3 A. Shortly after I joined the project, I had communications with Tisha Christle and other Cox
4 personnel in Phoenix who were working on the Vistancia deal. Although I would like to
5 be able to discuss those communications, I cannot do so without waiving the attorney-
6 client privilege relating to the subject matter of those communications. Cox has a policy of
7 not waiving its attorney/client privilege.

8 I can, however, discuss my communications with Shea representatives. For the most part,
9 my communications with Shea were with Shea's in-house counsel, Lesa Storey. I believe
10 that some of those conversations with Lesa also included Shea business representatives,
11 but do not recall anything about comments from those representatives.

12
13 Although I do not recall the details of my conversations with Lesa during the Fall of 2002,
14 I understood from things that she said that she was very experienced in real estate matters.
15 I was very new to real estate matters, and recall that Lesa presented herself as very
16 forthcoming about the contract terms.

17
18 I recall that we exchanged drafts of the residential and commercial agreements during the
19 Fall of 2002. Those drafts are reflected in attachments LT-7 through LT-10. I recall
20 understanding that Shea would pay Cox a \$2 million capital contribution toward the cost of
21 installing the telecommunications infrastructure at Vistancia. I understood that Cox had
22 not previously requested such a large capital contribution from a developer before but that
23 the capital contribution was necessary given the enormous expenses that Cox would have
24 to incur in building the infrastructure to support services to such a remote location.

25
26 Other than this provision for a capital contribution, however, I recall understanding that the
27 draft contracts were largely patterned after typical preferred provider agreements that Cox

1 had done elsewhere. As part of the terms of these draft agreements, Shea would provide
2 exclusive marketing of Cox's services in Vistancia in exchange for revenue sharing based
3 on penetration rates of the Cox services. I recall that Cox had originally provided for
4 revenue sharing in the draft residential agreement but not in the draft commercial
5 agreement, that Shea wanted revenue sharing in the commercial agreement, and that Cox
6 made changes to the draft commercial agreement to incorporate revenue sharing. I recall
7 that Shea also wanted to make changes to the draft agreements to provide for the recording
8 of easement rights and that we waited for Shea to provide the language. I recall that, with
9 the exception of the recording language that Shea was to provide, the drafts of the
10 agreements were nearly completed by December 2002.

11
12 During the entire time that Cox was negotiating the Vistancia contracts with Shea, I
13 understood that there was nothing unusual or out of the ordinary regarding the preferred
14 provider arrangement. Indeed, it is my understanding today that these initial draft
15 agreements, drafted largely by Cox in the Fall of 2002, are not in any way anti-
16 competitive; they gave Cox only non-exclusive access to Vistancia, provided for a capital
17 contribution from Shea, and provided for revenue sharing to Shea in exchange for
18 preferred marketing services by Shea.

19
20 **Q. Without disclosing privileged communications, please explain when and how you**
21 **learned that Shea wanted to revise the draft contracts?**

22 **A.** With respect to non-privileged communications, I recall only generally that I received and
23 reviewed revised drafts that Shea had prepared. I generally recall discussing with Lesa
24 Storey that Shea wanted to revise the contracts to provide for the use of an MUE. I was
25 not familiar with an MUE at all. I recall that Lesa explained that MUEs are being used
26 legally elsewhere in the country to allow the developer to control access to private
27 easements, particularly in large mixed use communities such as Vistancia.

1 Because the conversations occurred several years ago and I have been involved in many
2 other contract matters on behalf of Cox since then, I cannot in my mind distinguish the
3 different conversations that I had with Lesa. I recall at one point questioning why Shea
4 wanted to use a separate entity as the access provider, and I believe that I spoke with Lesa
5 about this. I cannot recall what Lesa communicated to me about this issue.

6
7 I also generally recall that in early 2003 I reviewed and revised the new draft agreements
8 prepared by Shea. These agreements are attached to my testimony as **LT-11**. These
9 revised agreements contained a provision for "most favored nation" rights. I generally
10 recall not understanding this new provision and asking for clarification from Lesa. Lesa
11 communicated in a memorandum to me that the provision imposed no real obligation on
12 Cox and was intended to assure a competitive playing field. The memorandum that I
13 received from Lesa is attached to my testimony as **LT-12**. I may have had a conversation
14 with Lesa about this as well, but, after receiving her assurances, I do not believe that I had
15 any further conversations with Lesa about the "most favored nation" provision. I recall
16 that we proposed some changes to Shea's drafts, including deletion of the term "most
17 favored nation." I do not recall why we deleted the term "most favored nation," but it was
18 probably just a stylistic revision. The red-line drafts that we provided to Shea are attached
19 as **LT-13** and **LT-14** to my testimony.

20
21 Although I believe that there were probably communications about other revisions that
22 Shea may have proposed in the new agreements, these are the only communications with
23 Lesa that I can recall relating to what became the Co-Marketing Agreement and Property
24 Access Agreement that were effective in April of 2003. I do recall from my conversations
25 with Lesa, however, that I was assured that the MUE structure was legal and that the
26 revised agreements did not change the substantive or financial terms of the arrangement
27 that Shea had previously negotiated with Cox. Given these assurances from Lesa, it was

1 reasonable to allow Shea to revise the agreements in the way that they determined was
2 necessary to effectuate their business decision to use the MUE structure.

3
4 The final residential and commercial agreements were executed effective April 8, 2003,
5 and are attached as **LT-1** and **LT-2** to my testimony. As I recall, I understood that Shea
6 would pay Cox the sum of \$3 million in capital contribution toward the cost of installing
7 infrastructure for telephone services. I also understood that, in exchange for Shea offering
8 preferred marketing services, Cox would pay Shea \$1 million and specified revenue
9 sharing. It was my understanding from my communications with Lesa that Shea wanted to
10 structure the agreements in this way for its own business purposes. It was my
11 understanding that these final agreements provided for non-exclusive access by Cox to
12 Vistancia.

13
14 **Q. Do you recall having any further communications with Lesa Storey during the**
15 **summer or fall of 2003?**

16 **A.** I do not recall specifically when the next set of communications occurred between Lesa
17 and me. Emails from Lesa to me during mid-2003 indicate that Lesa provided me with
18 drafts of the "CSER" (which I understood was another name for the MUE), the licensing
19 agreements, and amendments to the residential and commercial agreements. These emails
20 are attached as **LT-15 through LT-18** to my testimony. It was my understanding from
21 Lesa that these new documents were necessary to reflect the anticipated grant of the MUE
22 by the City of Peoria. Whether Shea received an MUE from the City of Peoria, and what
23 rights the MUE afforded to Shea, were business matters for Shea, not Cox.

24
25 Neither anyone at the system nor I had any role in Shea's dealings with the City of Peoria
26 regarding the MUE. I eventually understood that Shea did receive an MUE from the City
27 of Peoria in the summer of 2003. I recall only generally that I received another set of draft

1 agreements from Shea in the Fall of 2003, as reflected in **LT-19**, and I engaged in
2 communications with Lesa about these drafts, as reflected in documents attached as **LT-20**
3 through **LT-27**. I do not recall the details of any of these communications with Lesa. I do
4 recall understanding from Lesa that the purpose of the restated agreements was to reflect
5 the grant of the MUE by the City of Peoria and to provide record notice of the access
6 requirements for Vistancia, and that Shea needed to structure the deal as reflected in the
7 restated agreements in order to effectuate Shea's business purposes. As I have already
8 stated, I recall having received assurances from Lesa that this type of MUE arrangement,
9 though new to Arizona, has been used legally in other locations and that the restated
10 agreements would not change the substance or the financial terms of the original
11 arrangement that had been negotiated by Cox and Shea in the Fall of 2002.

12
13 As reflected in the emails attached as **LT-20** through **LT-21**, I had communications with
14 Lesa about the fact that Shea wanted to rearrange the agreements to put Cox's payments to
15 Shea into the licensing agreements. As reflected in the emails, Lesa informed me that
16 Shea's litigation counsel wanted to make the changes to assure "the best possible structure
17 to withstand potential litigation by Accipiter." I was not familiar with Accipiter, but Lesa
18 explained that Accipiter was a small phone company serving the area and was threatening
19 suit over the MUE arrangement. Shea wanted to be able to use Cox's outside legal counsel
20 to defend any potential suit by Accipiter, and inquired whether Cox would allow the
21 representation, as reflected in emails attached as **LT-22** though **LT-24**. Lesa represented
22 the potential litigation as simply regarding the "general enforceability of the [MUE]
23 structure under Arizona and federal law," as is reflected in the email attached as **LT-22**. I
24 do not recall the specifics of any conversation with Lesa about this matter. I believe,
25 however, that Lesa did not communicate to me any reasons why the MUE structure that
26 Shea had provided for in Vistancia posed any legal problems. Certainly, it would be
27 understandable that, if MUEs had not previously been used in Arizona by developers, the

1 MUE might raise property law issues that would face litigation, and it would be Shea's
2 business decision as to whether to proceed in light of such litigation. At any rate, I am
3 certain that Lesa and I did not discuss whether there was any potential for anti-trust claims
4 as a result of the MUE arrangement instituted by Shea. Again, Lesa had always indicated
5 that the MUE structure was found to be legal in other parts of the country, and we never
6 discussed anti-trust issues.

7
8 I also recall that the draft licensing agreements contained overly broad indemnification
9 language that would have required Cox to indemnify Shea in almost any situation where
10 Shea was sued by a third party. I recall informing Lesa that Cox would need to revise the
11 language. I proposed inserting language to the effect that Cox would provide the requested
12 indemnification only for liability to which Shea would become subject "as a result of any
13 failure by Licensee [Cox] to satisfy its obligations" I recall that Lesa readily agreed to
14 this revision. Again, Lesa and I had no discussions about anti-trust issues, and this
15 language had nothing to do with any concerns about anti-trust litigation.

16
17 Although I may have had other conversations with Lesa during the contract negotiations, I
18 do not recall many details about those conversations. The final restated agreements and
19 licensing agreements are attached as **LT-3, LT-4, LT-3, and LT-6** to my testimony.

20 I do not recall any discussions with Lesa, or anyone else associated with Shea or with any
21 Shea entity, discussing that the Vistancia contracts would prevent or restrict competition
22 within the Vistancia community. I believe that I would recall any such discussions, and
23 believe that no such discussions occurred. It is my understanding that Cox does not enter
24 into contracts unless they provide for non-exclusive access rights.

25 **Q. Since 2003, have you had any communications with Lesa Storey or any other Shea**
26 **representative regarding Vistancia or the MUE?**

27 **A. Not that I recall.**

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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Q. Does this end your testimony?

A. Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE FORMAL) DOCKET NO. T-03471A-05-0064
COMPLAINT OF ACCIPITER)
COMMUNICATIONS, INC., AGAINST)
VISTANCIA COMMUNICATIONS, L.L.C.,)
SHEA SUNBELT PLEASANT POINT, L.L.C.,)
AND COX ARIZONA TELCOM, LLC.)

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

DIRECT TESTIMONY
OF
LINDA TRICKEY
ON BEHALF OF
COX ARIZONA TELCOM, L.L.C.

ATTACHMENTS
LT-1 Through LT-27
1 of 2

April 5, 2006

LT-1

Shea Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT ("CMA") is entered into this 8 day of April 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a nonrefundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer intends to subject all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this CMA is being executed by the parties prior to recordation of the CSER, this CMA shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.

Cox Initial *B*

- 1 -

Developer Initial *CVT*

COX-0000001

- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- G. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- I. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows:

AGREEMENT

- I. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
 - (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in classes (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
 - (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.

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- (f) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (g) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (h) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (i) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital E of this CMA), as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (t) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (u) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.

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Developer Initial *AC*

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- (w) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (x) "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.
- (y) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (z) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (aa) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (bb) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (dd) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity of

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Developer Initial 

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enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, governmental expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

- (ee) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (gg) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.
- (hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights:

- (a) Development Process. As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.
- (b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital E). The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

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Developer Initial 

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- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (c) Pre-Wire Specifications. Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

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(d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).

(c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

I. **Communication Services & Technology Facilities Obligations of Cox.**

(a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003.

(b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. The compensation as set

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forth in Exhibit G (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through estrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.
- (e) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the

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Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and

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conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:

- (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;
- (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;
- (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to

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model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) Similar Agreements and Co-Branding. Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).

(iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

(b) Cox Marketing and Promotion Effort. Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.

(d) Reporting by Neighborhood Builders. During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

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(e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plans processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master

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Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

1. Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

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(ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computers or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. **Representations and Warranties**

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(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) By Cox. Cox hereby represents and warrants to Vistancia as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management

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of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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- (a) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. **Termination and Partial Termination; Rights of Parties after Termination.**

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
- (i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to

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Vistañcia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

- (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

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- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.
- (c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on

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behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from

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and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

- (c) Cox. Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous.

- (a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

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- (e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is

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required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents, which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Co-Marketing Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: *Jeff Maduca*
Asst. Sec.

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: *Curtis E. Smith*
Curtis E. Smith, its Chief
Operating Officer

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: *Howard T. Germain*
VP of Business Operations

Cox Initial *HT*

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Developer Initial *CS*

"Access Entity"


Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Shea Sunbelt Pleasant Point, LLC, a Delaware
limited liability company, its Manager

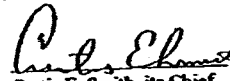
By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: 
ASST Sec

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its
Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: 
Curtis E. Smith, its Chief
Operating Officer

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated April 8th 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property;
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaigns developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party.

EXHIBIT C

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- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT C
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EXHIBIT D

**Cable Television/Internet Access Services Pre-Wire Specifications
Vistancia Residential Pre-Wiring Guidelines**

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT C

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

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Shea Sombell Pleasant Point, LLC
&
COXCOM, INC.
PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this 9 day of April, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, Shea Sombell Pleasant Point, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- D. Whereas the Master Developer intends to subject all or a portion of Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License (as hereinafter defined) shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this Agreement is being executed by the parties prior to recordation of the CSER, this Agreement shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.
- E. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.

G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, the Access Entity and Cox agree as follows:

AGREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital D of this Agreement), as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

- (j) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.
- (m) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- (n) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (o) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement (the form of which shall be subject to review and approval by Cox as provided in Recital D), pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- (p) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (q) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (r) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (s) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (t) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment,

power interfaces, service drop wiring and service laterals and other structures and improvements, but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.

- (u) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (v) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (w) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (x) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (y) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (z) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (aa) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital D). The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
- (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plots. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.

- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

4. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the

Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.

- (vii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carriers.
- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (c) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings.

[Handwritten Signature]

- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communications Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation which, in the aggregate, allows a lower payment than is provided for the Percentage Fee under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may be subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage Payment under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may be subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction

of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 8) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC with respect to that Qualifying Building.

Quint

Penetration Percentage

0% - 74%
75% - 85%
86% - 95 %
96% - 100%

Applicable Percentage
Fee

0% of MRC
3% of MRC
4% of MRC
5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Master Developer shall be paid the Applicable Percentage Fee, if any, corresponding to the decreased Penetration Percentage.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
- (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.

10. **Insurance; Indemnification; Waiver of Subrogation.**

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other

technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

11. Representations and Warranties

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation started on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.

(iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access

Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

12. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect

actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 11 below).

13. Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in



Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

- (b) **Confining Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License, provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.
- (c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:
- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and

Master Developer shall remove all of its equipment used in the operation of "Vistancia
net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

Developer Initial *[Signature]*

- (f) Award Final. Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. Assignment.

- (a) No Assignment. Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

16. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or

disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

- (r) Recordings. Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.A.S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Property Access Agreement as of the date first written above.

**SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company**

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: *Jill M. Allen*
its ASST Sec

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: *Curtis E. Smith*
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

**Coxcom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix**

By: *Howard Tigerman*
Howard Tigerman
Vice President of Business Operations

Address: 20401 North 29th Avenue

Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918


and required copy to
1400 Lake Haven Drive
Atlanta, GA 30319
Attn: General Counsel

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Shea Sombelt Pleasant Point, LLC, a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By:

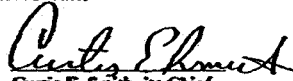

Asst Sec

By: Sombelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sombelt PP, LLLP, an Arizona
limited liability limited partnership,
its Manager

By: Sombelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By:


Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network: To Be Determined
- 2) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 3) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT C
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

- (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT D
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED CO-MARKETING AGREEMENT

This AMENDED AND RESTATED CO-MARKETING AGREEMENT ("CMA") is entered into this 25th day of September, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Vistancia, LLC, a Delaware limited liability company (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Co-Marketing Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original CMA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original CMA, all in accordance with and as hereinafter provided in this CMA.
- C. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Association Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- D. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a non-refundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$2,250,000.00.
- E. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built, and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.
- G. Whereas the Master Developer has subjected a portion of the Development (and intends to subject further portions of the Development in the future) to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access

restrictions set forth in the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona.

- H. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- I. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- J. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- K. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows, and the Original CMA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superseded in its entirety by this CMA:

AGREEMENT

- I. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Amended and Restated Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).

- (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
- (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (l) "CSER" means the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as "Cox High Speed Internet".
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "MUEI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.
- (t) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (u) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.

- (v) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (w) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (x) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (y) "Platted Easement Area" shall mean and refer to all of the easement areas designated as "M.U.E." or "Multi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (z) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit B, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (aa) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (bb) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/IT interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (cc) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (dd) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of

covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

(cc) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ff) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(gg) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(hh) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(ii) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

(a) Development Process. As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License concurrently with their execution of this CMA. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSEER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSEER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSEER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement

Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.

- (c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 4(d), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A, provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).
- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

1. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$2,250,000.00.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 4(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development.
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.

- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the AFS plans for such trenches (it being agreed that any additional trenching beyond the AFS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(c) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

(m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:

(i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;

(ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and License Fees.**

(a) **Exclusive Rights of Cox.** During the Term of this CMA:

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;

(ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia

Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) Similar Agreements and Co-Branding. Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).

(iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation or license fees which, in the aggregate, allow a lower payment than is provided for pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation or license fees which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision of hereof, this Section 5(a)(iv) shall terminate and be of no further force or effect (and no party to this CMA shall have any further rights, liabilities or obligations under this Section 5(a)(iv)) upon (a) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (b) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the MUEL.

(b) Cox Marketing and Promotion Effort. Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) Reporting by Neighborhood Builders. During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master

Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

6. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA, provided that Master Developer included the required provisions in the purchase agreement or option agreement with such Neighborhood Builder.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plans processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date hereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable)

commencement of construction of the trench that requires any such Additional Trenching, Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

7. **Technology Facilities Cooperation & Coordination by Cox.**

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. **Representations and Warranties**

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(v) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

(vi) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(vii) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(viii) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.

(ix) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Vistancia as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) *Compliance with Law.* Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) *By Access Entity.* Access Entity hereby represents and warrants to Cox as follows:

- (i) *Organization and Authority.* Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) *Due Execution.* Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) *No Conflict.* Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) *No Litigation.* There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) *Compliance with Law.* Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) *No Conflicting Rights.* Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

- (a) *Events of Default.* Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) *Monetary Default.* A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) *Performance Default.* A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

- (b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) Cox Additional Remedies. In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) CSER and License. No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 10(a) above and Section 11 below).

11. Termination and Partial Termination; Rights of Parties after Termination.

- (a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
 - (i) Cessation or Interruption of Communication Service. In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(n) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement

with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

(c) **License Fees under the Non-Exclusive License.** The Non-Exclusive License provides for the payment of a License Fee by Cox to the Access Entity. The License Fee shall be payable by Cox to the Access Entity during the Term of this CMA, provided no License Fee shall be payable after termination of the CMA with respect to any Communication Service that is the subject of such termination, except for License Fees accrued in respect of such Communication Service(s) but unpaid as of the date of such termination. So long as the Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay the License Fee to the Access Entity. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) does not terminate this CMA (and continues to perform under this CMA), Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

(d) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting

forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

(c) **Cox.** Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. **Miscellaneous.**

(a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).

(b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.

(c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any

counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

- (d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "MUE" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Co-Marketing Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

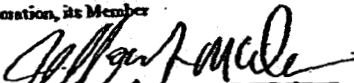
and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

VISTANCIA, LLC, a Delaware limited liability company

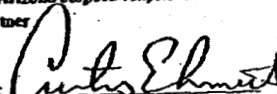
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
Its: J. Steven Risley

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

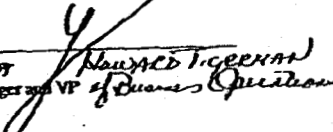
By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By:


J. Steven Risley
General Manager and VP of Business Operations

"Access Entity"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona
limited liability company

By: Vistancia, LLC, a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: *[Signature]*
ASST. SECRETAR

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its
Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: *[Signature]*
Curtis E. Smith, its

Chief
Operating Officer

Lender Consent:

The undersigned hereby consents to the foregoing Amended and Restated Co-Marketing Agreement, as required by the terms of that certain Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003:

RESIDENTIAL FUNDING CORPORATION, a Delaware
corporation

By: *[Signature]*
Its: DIRECTOR

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Amended and Restated Co-Marketing Agreement dated September 25, 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities; a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) In all of their media and print materials that are specific to Vistancia (e.g., "stand alone" media and print materials relating only to Vistancia that do not include any other communities or projects), Buyer and Seller shall advertise Vistancia as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:

Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.

Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

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EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications

EXHIBIT C

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and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (j) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.

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(7) provide notice of pending escrow closings

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EXHIBIT D

**Cable Television/Internet Access Services Pre-Wire Specifications
Vistancia Residential Pre-Wiring Guidelines**

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including JA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT E

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EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT

This AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this 25th day of September, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Property Access Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original PAA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original PAA, all in accordance with and as hereinafter provided in this Agreement.
- C. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- D. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- E. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- F. Whereas the Master Developer has subjected a portion of (and intends to subject further portions of) Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona.
- G. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- H. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona concurrently with the execution of this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide

Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.

- I. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, the Access Entity and Cox agree as follows, and the Original PAA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original PAA shall be of no further force or effect and is replaced and superseded in its entirety by this Agreement:

AGREEMENT

- I. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

- (f) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (g) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (h) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (i) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (m) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and assigns.
- (n) "MUEI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.
- (o) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement concurrently with the execution of this Agreement by the parties, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License.
- (p) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (q) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (r) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding items is sometimes hereafter referred to as a "Parcel Plat."
- (s) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (t) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.

- (o) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (v) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (w) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (x) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (y) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (z) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (aa) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of

subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License concurrently with their execution of this Agreement. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
 - (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

1. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to such Building

and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.

- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (f) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the AFS plans for such trenches (it being agreed that any additional trenching beyond the AFS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.
- (g) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing.

placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.

- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
 - (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
 - (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
 - (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:
- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
 - (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.

- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation or license fees which, in the aggregate, allows a lower payment than is provided for in Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for under Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision hereof, this Section 5(d) shall terminate and be of no further force or effect (and no party to the this Agreement shall have any further rights, liabilities or obligations under this Section 5(d) upon (i) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties); or (ii) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the MUEI.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any

technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection (e) to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. **Technology Facilities Cooperation & Coordination by Cox.**

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of

Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

I. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a) notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

9. **Representations and Warranties**

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date,

and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform; any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 10(a) above and Section 11 below).

11. Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master

Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of

Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

- (f) Award Final. Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

- (a) No Assignment. Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Proria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to customers in Proria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or


disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

- (r) Recordings. Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "M.U.E." (Multi-Use Easement) areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Property Access Agreement as of the date first written above.

VISTANCIA, LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
J. Steven Rizley
ASST Secy

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, L.L.P., an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

Address: 6720 N. Scousdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
3800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Coxcom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix

By: _____
J. Steven Rizley
General Manager and VP

Address: 20401 North 29th Avenue

Phoenix, AZ 85077
Phone: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: General Counsel

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Property Access Agreement as of the date first written above.

VISTANCIA, LLC, a Delaware limited liability company

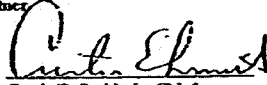
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, L.L.P., an Arizona limited liability limited partnership, its Manager

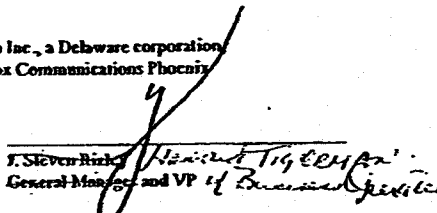
By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
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and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Coxcom Inc., a Delaware corporation
d/b/a Cox Communications Phoenix

By: 
F. Steven Riehl, General Manager and VP of Business Services

Address: 20401 North 29th Avenue

Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Haven Drive
Atlanta, GA 30319
Attn: General Counsel

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Vistancia, LLC, a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: *Albert Medina*
Its: *ASST Secretary*

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona
limited liability limited partnership,
its Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: *Curtis E. Smith*
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
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and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Lender Consent:

The undersigned hereby consents to the foregoing Amended and Restated Property Access Agreement, as required by the terms of that certain Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003:

RESIDENTIAL FUNDING CORPORATION, a Delaware corporation

By: *Rebecca D. Smith*
Its: DIRECTOR

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Amended and Restated Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building skewers from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) **Network:** To Be Determined
- 2) **Video Services:** Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 3) **Voice Services:** Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) **Data Services:** Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) **Bandwidth:** The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT C
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

- (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT D
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

LT-5

First American Title

COURTESY
RECORDING

WHEN RECORDED RETURN TO:

Vistancia Communications, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

1/2

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20040212876 03/02/2004 13:54
ELECTRONIC RECORDING

301-13-2-1--
leonardil

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": December 31, 2003

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECTALS

Section 1.01 WHEREAS, Licensor is the "Grantee" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Property Access Agreement dated as of September 25, 2003, executed by Licensor, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "PAA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23,

2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and PAA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article V below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are by this License acknowledged, the Parties to this License agree as follows:

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the PAA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Video Television Services (as hereinafter defined), Internet Access Services (as hereinafter defined), and Telephone Service (as hereinafter defined) to Buildings (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Video Television Services, Internet Access Services, and Telephone Services or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder, provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the PAA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the PAA, then the terms and conditions of the CSER (or the PAA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as 'Cox High Speed Internet'. As used herein, the term "Video Television Services" shall mean the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services. As used herein, the term "Telephone Service" shall mean local and long distance telephone service provided by Licensee through one or more affiliates or third parties. As used herein, the term "Building" shall mean a building or other structure within the Development that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within the Development is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the PAA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the PAA. Any Transfer to a Person that is not authorized under Section 13(c) of the PAA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the PAA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the PAA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the PAA and shall also be null and void and of no force or effect.

Section 2.04 Use of Easement. This License shall be for the private, personal, exclusive and perpetual use and benefit of Licensee and its grantees, licensees, lessees, franchisees, successors and permitted assigns who have been identified by and contracted with the Licensee to own, install, repair, relocate, expand, or otherwise service the Facilities in the Service Easement Area.

Section 2.05 Title and Authority. Licensor represents, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantee" under the CSER, (b) Licensor has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, and (c) the individual executing this License on behalf of the Licensor has the authority to so execute the License.

Section 2.06 Chain of Title. This License is conveyed to the Licensee, its grantees, successors and permitted assigns, to have and to hold, so long as the rights, privileges and interests (licenses and easements) herein granted shall be used for the express purposes and upon the terms and conditions specified herein, but shall be subject to all liens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor and Licensee hereby covenant and agree that the License granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and permitted assigns of each of the respective Parties hereto.

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

Section 3.01 License Fee. In consideration of the license granted hereunder, Licensee agrees to pay to Licensor a fee (the "License Fee") calculated in accordance with Schedule 3.01 attached hereto, which License Fee shall be payable in accordance with the terms of said Schedule 3.01.

Section 3.02 Service Standards. All Video Television Services, Internet Access Services, and Telephone Services provided by Licensee to Buildings within the Development shall be of the quality required under the PAA.

ARTICLE IV - INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses) incurred in connection with any third party action, suit or proceeding or any third party claim asserted, to which the Indemnitees may become subject as a result of any failure by Licensee to satisfy its obligations under this License, the PAA, and/or any applicable law, regulation or governmental requirement; provided, however, that

Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - AGREEMENTS BENEFITING THE CITY

Section 5.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEL, to convert the MUEs (as such term is defined in the MUEL) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEL. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - NOTICES

Section 6.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 6.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 Delivery Information. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

LICENSEE

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: [Signature]
Its: VPA Business Operations

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: [Signature]
Curtis E. Smith, its Chief Operating Officer

Schedule: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of December, 2003, by Howard T. Gerwin, the V.P. Business Operations of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Rhona M. Vilardi
Notary Public

My Commission Expires:



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

LICENSEE

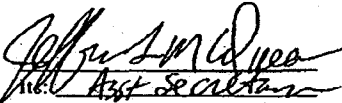
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: _____
Its: _____


By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
John M. DePue
Title: Asst. Secretary

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

Schedule: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

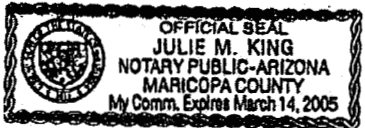
My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005

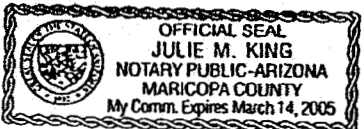


STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Jeffrey S. McQueen, the Assistant Secretary of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"). Subject to the continuing and prior lien of the Deed of Trust and the rights and interests of the undersigned in the Loan Documents (as defined in the Deed of Trust), including without limitation, that certain Assignment of Construction Agreements and Development Items dated December 23, 2002 made by Vistancia, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), for the benefit of the undersigned, the undersigned hereby consents to the foregoing Non-Exclusive License Agreement (the "License"); provided, however, that subject to the terms and conditions of that certain Assignment of Common Services Easements and Restrictions dated June 27, 2003 made by Vistancia Communications, L.L.C., an Arizona limited liability company, for the benefit of the undersigned, the undersigned agrees that the License shall continue in full force and effect, even in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the real property covered by such Deed of Trust.

RESIDENTIAL FUNDING CORPORATION, a Delaware corporation

By: *Robert J. Slavich*
Its: DIRECTOR

STATE OF California
County of Los Angeles ss.

On this 5th day of December, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert J. Slavich, personally known to me (approved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.



Sonia E. Garcia
Notary Public

APPENDIX A**Definitions and Interpretations****ARTICLE I - DEFINITIONS**

Section 1.01 Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications/programming services over lines or wireless channels, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.02 Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, member, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.03 Association. The term "Association" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

Section 1.04 Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Section 1.05 Combined Easement. The term or phrase "Combined Easement" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

Section 1.06 Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.

Section 1.07 Communication Service Provider. The term or phrase "Communication Service Provider" shall mean and refer to any third party provider of one or more Communication Services, which may include a combination of Persons, such that one (1) or more of the Communication Services are available within the Development.

Section 1.08 Communication Services. The term or phrase "Communication Services" shall mean and refer to any one or more of the following: Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication services or utilities, together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.09 Common Services Easements and Restrictions. The term or phrase "Common Services Easements and Restrictions" shall mean and refer to the Common Services Easements and Restrictions to which this Appendix A is attached, as amended or supplemented from time to time.

Section 1.10 Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.11 Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Section 1.12 Declarations. The term "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declaration of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time. Each Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.13 Development. The term "Development" shall mean and refer to the entire parcel of real property the legal description of which is attached hereto as Exhibit A, together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.13. To the extent development of additional real property is or may be contemplated by any or all of the Declarations, then (i) the term "Development" shall be liberally construed to include such real property when and as identified from time to time pursuant to a Supplement to Common Services Easements and Restrictions recorded as hereinafter provided, and (ii) such additional real property may from time to time be annexed to the real property described in Exhibit A and made part of the "Development" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except as provided in this Section 1.13), by the execution and recording in the Office of the Maricopa Recorder of a Supplement to Common Services Easements and Restrictions (the "Supplement to Common Services Easements and Restrictions") signed by Grantor (if Grantor owns the real property being annexed) and Grantee (with the terms "Grantor" and "Grantee" having the meanings provided in the Common Services Easements and Restrictions), and describing the real property to be annexed to Exhibit A (which real property shall be designated in an "Exhibit A-Supplement" included in such Supplement to Common Services Easements and Restrictions). The recording of said Supplement to Common Services Easements and Restrictions shall constitute and effectuate the annexation of the real property described such Exhibit A-Supplement to the "Development" property, making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A, as if said real property originally had been included in Exhibit A at the time of the initial recordation of the Common Services Easements and Restrictions. Notwithstanding anything to the contrary, if at the time of the recordation of any such Supplement to Common Services Easements and Restrictions, the real property described in such Exhibit A-Supplement is owned by a Person other than Grantee, then that Person must join with Grantee in the execution of such Supplement to Common Services Easements and Restrictions.

Section 1.14 E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.15 Excluded Devices. The term or phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology used primarily in the In Gross Easement Area will be an Excluded Device only to the extent required by law to be permitted (E.g. Section 207 of the Telecommunications Act of 1996 and 47 C.F.R. 1.4000) or to the extent authorized by the Declarations. Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

Section 1.16 Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Communication Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manholes, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Communication Services, including, without limitation, communication, video, data, e-commerce, Internet, community intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used.

Section 1.17 In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

Section 1.18 In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real property the legal description of which is attached hereto as Exhibit B together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.18. If any Supplement to Common Services Easements and Restrictions is recorded pursuant to Section 1.13 which designates additional real property to be annexed to the Development pursuant to an Exhibit A-Supplement, then such Supplement to Common Services Easements and Restrictions shall also designate the real property (if any) included in such Exhibit A-Supplement that is to be made part of the "In Gross Easement Area" hereunder (which real property shall be designated in an "Exhibit B-Supplement" included in such Supplement to Common Services Easements and Restrictions). Upon recordation of such Supplement to Common Services Easements and Restrictions and Exhibit B-Supplement, the term "In Gross Easement Area" shall be liberally construed to include the real property identified in such Exhibit B-Supplement, and the real property identified in such Exhibit B-Supplement shall be part of the "In Gross Easement Area" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except for those approvals required for the recordation of a Supplement to Common Services Easements and Restrictions as provided in Section 1.13). The recording of said Supplement to Common Services Easements and Restrictions

shall constitute and effectuate the annexation of the real property described such Exhibit B-Supplement to the "In Gross Easement Area", making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A as if said real property originally had been included in Exhibit B at the time of the initial recordation of the Common Services Easements and Restrictions.

Section 1.19 Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.20 Mandatory Communication Service Provider. The term or phrase "Mandatory Communication Service Provider" shall mean and refer to a Communication Service Provider that provides one (1) or more of the Mandatory Communication Services. The initial Mandatory Communication Service Providers are listed on Exhibit C attached hereto, and are subject to change in accordance with Section 2.08 and Section 2.09 of the Common Services Easements and Restrictions.

Section 1.21 Mandatory Communication Services. The term or phrase "Mandatory Communication Services" shall mean and refer to the Communication Services set forth on Exhibit C attached hereto.

Section 1.22 Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Section 1.23 Master Declaration. The term or phrase "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation. The Master Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of the Master Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.24 Owner. The term "Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a platted lot, a development parcel or any other land within the Development, or their lessees, tenants or any other successors in interest.

Section 1.25 Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Communication Service Providers to establish Communication Services to an Owner's residential structure, building or other structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure (or building or other structure, as applicable) and upon and within the residential structure (or building or other structure, as applicable) as contemplated by the design for the initial construction thereof, as thereafter modified from time to time.

Section 1.26 Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area (however denominated) under any of the Declarations, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary

or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations and applicable law; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Section 1.27 Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Section 1.28 Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.29 Plats. The term "Plats" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time.

Section 1.30 Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the easement areas designated as "Multi-Use Easement" or "M.U.E." on the Plats.

Section 1.31 Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Section 1.32 Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Communication Service Provider may enter into a third party contract (*e.g.*, a monitoring contract) with a security monitoring company.

Section 1.33 Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Section 1.34 Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:

- (a) All of the Platted Easement Area.
- (b) All of the Owner Access Area.
- (c) Each street or roadway created by a Plat that is private (as opposed to public) in nature and is owned (or is to be owned, pursuant to the terms of such Plat) by Vistancia Maintenance Corporation, any Association, or any other homeowners' or property owners' association established pursuant to a Declaration.
- (d) Those portions of the tracts and other areas constituting common areas (however denominated) under any of the Declarations (other than the private streets and private roadways described in subsection (c) above, which shall be governed by that subsection rather than this subsection (d)), to the extent reasonably necessary for the establishment of Communication Services and Facilities to serve the Owners.

Section 1.35 Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.36 Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.37 Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

Section 1.38 Village Declaration. The term or phrase "Village Declaration" shall mean and refer to each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time. Each Village Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Village Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.39 Visible From Neighboring Property. The term or phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of the In Gross Easement Area.

Section 1.40 Vistancia Maintenance Corporation. The term or phrase "Vistancia Maintenance Corporation" shall mean and refer to the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

ARTICLE II - MISCELLANEOUS AND CONSTRUCTION

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment, Termination or Alteration. Any agreement which incorporates this Appendix A may be altered, terminated or amended in whole or in part, at any time. Any such amendment, termination or alteration must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the agreement being amended, terminated or altered.

This Appendix A may at any time be altered, terminated or amended in whole or in part, as it relates to any agreement which incorporates this Appendix A. Any such amendment, termination or alteration with respect to this Appendix A (i) must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the applicable agreement which incorporates this Appendix A, and (ii) any such amendment, termination or alteration with respect to this Appendix A shall not affect or have any impact upon this Appendix A as it relates to any other agreement incorporating this Appendix A (unless and until this Appendix A is amended, terminated or altered by a written instrument executed by all Parties to such other agreement).

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 2.04 Waiver. No delay or failure by any Party in exercising any rights under any agreement which incorporates this Appendix A, and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties thereto, shall be construed and governed exclusively according to the internal laws of the State of Arizona, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Arizona state courts located in Maricopa County, State of Arizona and of the federal courts with jurisdiction over Maricopa County, State of Arizona, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Arizona state courts located in Maricopa County, State of Arizona or of the federal courts with jurisdiction over Maricopa County, State of Arizona. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Arizona will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Maricopa County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented

or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the term of the agreement is continuing, or the exact date [day, month and year] that the term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" in any agreement which incorporates this Appendix A shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Maricopa County Superior Court, State of Arizona, is closed, then that obligation shall be performed on the next following regular business day.

Section 2.15 Obligation of Good Faith. The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 Not a Partnership. Nothing herein contained or contained in any agreement which incorporates this Appendix A shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 Exhibits, Appendices and Schedules. All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

SCHEDULE 1.01

Other Easements or Licenses

Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003.

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona and Partial Termination, Abandonment and Extinguishment of Easement recorded on December 24, 2003, in Instrument No. 2003-1728051, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions, and Restrictions for Vistancia, recorded on July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona.

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19, recorded in Book 655 of Maps, page 35, official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded October 10, 2003 as 2003-1423458 of official records of Maricopa County, Arizona and Certificate of Correction recorded December 9, 2003, as 2003-1668089 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A10A, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 33.

Final Plat for Vistancia Village A Parcel A12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 32.

Final Plat for Vistancia Village A Parcel A13, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 31.

Final Plat for Vistancia Village A Parcel A14, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 661 of Maps, Page 25 Arizona and Certificate of Correction recorded January 2, 2004 as 2004-0000466 of official records of Maricopa County, Arizona.

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Final Plat for Vistancia Village A Parcel A19, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 39.

Final Plat for Vistancia Village A Parcel A20, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 3.

Final Plat for Vistancia Village A Parcel A32, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 34.

Final Plat for Vistancia Village A Parcel A33, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 29.

Final Plat for Vistancia Village A Parcel A36, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 30.

Final Plat for Vistancia Village A Parcel A37, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 662 of Maps, Page 26.

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor a License Fee according to the following scale based on the Applicable License Fee percentage (determined pursuant to the chart below according to the Penetration Percentage (as hereinafter defined) within each Building) multiplied by the Monthly Recurring Revenue (as hereinafter defined) for that Building. The License Fee shall be calculated (and paid by Licensee, if owed pursuant to the provisions of this Schedule 3.01) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Licensor would receive a License Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable License Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95 %	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher License Fee under the above chart, then Licensor shall be entitled to the higher License Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Licensor shall be paid the Applicable License Fee, if any, corresponding to the decreased Penetration Percentage.

As used herein, the term "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Licensee (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Licensee Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

In addition to the exclusion from MRC set forth above, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of License Fee payments due to Licensor hereunder.

The parties acknowledge that Licensee may be required by federal or state law, to lease or allow use of, portions of the Licensee Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Licensee from such third party providers be deemed MRC or subject to payment of License Fees hereunder. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Licensee Technology Facilities as

described above shall not be deemed an assignment, sale or transfer of the Licensee Technology Facilities or a delegation or assignment of Licensee's rights.

All payments of the License Fees shall be payable to Licensee without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Licensee may designate. Payments of License Fees shall be made during the Term of the License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the MRC for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the PAA.

LT-6

First American Title

**COURTESY
RECORDING**

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20040212877 03/02/2004 13:54
ELECTRONIC RECORDING

WHEN RECORDED RETURN TO:

Vistancia Communications, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

301-13-2-2--
leonardi1

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NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": December 31, 2003

"Licensor":	Corporate/Company Name:	Vistancia Communications, L.L.C., an Arizona limited liability company
	State of Organization:	Arizona
	Address:	6720 North Scottsdale Road Suite 160 Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

Section 1.01 WHEREAS, Licensor is the "Grantee" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Co-Marketing Agreement dated as of September 25, 2003, executed by Licensor, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "CMA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23,

2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and CMA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article V below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are by this License acknowledged, the Parties to this License agree as follows:

ARTICLE II - LICENSE

Section 2.01 Premises and Use Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the CMA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Cable Television Services, Internet Access Services (as hereinafter defined), Telephone Services (local) and Telephone Services (long distance) to SFRs (as hereinafter defined) and MFUs (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder, provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the CMA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the CMA, then the terms and conditions of the CSER (or the CMA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as 'Cox High Speed Internet'. As used herein, the term "SFR" shall mean a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse; and, the term "MFU" shall mean residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.

Section 2.02 Term This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the CMA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the CMA. Any Transfer to a Person that is

not authorized under Section 13(c) of the CMA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the CMA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the CMA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the CMA and shall also be null and void and of no force or effect.

Section 2.04 Use of Easement. This License shall be for the private, personal, exclusive and perpetual use and benefit of Licensee and its grantees, licensees, lessees, franchisees, successors and permitted assigns who have been identified by and contracted with the Licensee to own, install, repair, relocate, expand, or otherwise service the Facilities in the Service Easement Area.

Section 2.05 Title and Authority. Licensor represents, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantee" under the CSER, (b) Licensor has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, and (c) the individual executing this License on behalf of the Licensor has the authority to so execute this License.

Section 2.06 Chain of Title. This License is conveyed to the Licensee, its grantees, successors and permitted assigns, to have and to hold, so long as the rights, privileges and interests (licenses and easements) herein granted shall be used for the express purposes and upon the terms and conditions specified herein, but shall be subject to all liens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor and Licensee hereby covenant and agree that the license granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and permitted assigns of each of the respective Parties hereto.

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

Section 3.01 License Fee. In consideration of the license granted hereunder, Licensee agrees to pay to Licensor a fee (the "License Fee") calculated in accordance with Schedule 3.01 attached hereto, which License Fee shall be payable in accordance with the terms of said Schedule 3.01.

Section 3.02 Service Standards. All Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) provided by Licensee within the Development shall be of the quality required under the CMA.

ARTICLE IV - INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses) incurred in connection with any third party action, suit or proceeding or any third party claim asserted, to which the Indemnitees may become subject as a result of any failure by Licensee to satisfy its obligations under this License, the CMA, and/or any applicable law, regulation or governmental requirement; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and

assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - AGREEMENTS BENEFITTING THE CITY

Section 5.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEL, to convert the MUEs (as such term is defined in the MUEL) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEL. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - NOTICES

Section 6.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 6.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 Delivery Information. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

LICENSEE

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

COXCOM, INC., a Delaware corporation *dba* COX COMMUNICATIONS PHOENIX

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: VP of Business Development
Its: VP of Business Development

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: Curtis E. Smith
Curtis E. Smith, its Chief Operating Officer

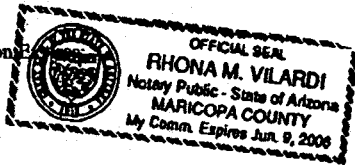
Schedules: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of November, 2003, by Harold T. Gordon, the Vice President/Operations of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Rhona M. Vilardi
Notary Public

My Commission Expires:



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

LICENSEE

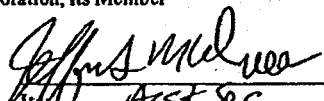
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX

By: Vistancia, LLC, a Delaware limited liability company, its Manager

By: _____
Its: _____

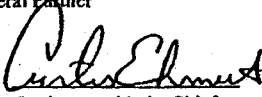
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
ASST. SEC.

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

Schedules: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Jeffrey S. McQueen, the Assistant Secretary of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements dated December 23, 2002 and recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona (the "Deed of Trust"). Subject to the continuing and prior lien of the Deed of Trust and the rights and interests of the undersigned in the Loan Documents (as defined in the Deed of Trust), including without limitation, that certain Assignment of Construction Agreements and Development Items dated December 23, 2002 made by Vistancia, LLC, a Delaware limited liability company (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), for the benefit of the undersigned, the undersigned hereby consents to the foregoing Non-Exclusive License Agreement (the "License"); provided, however, that subject to the terms and conditions of that certain Assignment of Common Services Easements and Restrictions dated June 27, 2003 made by Vistancia Communications, L.L.C., an Arizona limited liability company, for the benefit of the undersigned, the undersigned agrees that the License shall continue in full force and effect, even in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the real property covered by such Deed of Trust.

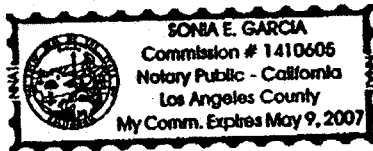
RESIDENTIAL FUNDING CORPORATION, a Delaware corporation

By: *Robert J. Plavelake*
Its: DIRECTOR

STATE OF California
County of Los Angeles ss.

On this 5th day of December, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert J. Plavelake, personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.



Sonia E. Garcia
Notary Public

APPENDIX A**Definitions and Interpretations****ARTICLE I - DEFINITIONS**

Section 1.01 Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications/programming services over lines or wireless channels, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.02 Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, member, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.03 Association. The term "Association" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

Section 1.04 Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Section 1.05 Combined Easement. The term or phrase "Combined Easement" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

Section 1.06 Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.

Section 1.07 Communication Service Provider. The term or phrase "Communication Service Provider" shall mean and refer to any third party provider of one or more Communication Services, which may include a combination of Persons, such that one (1) or more of the Communication Services are available within the Development.

Section 1.08 Communication Services. The term or phrase "Communication Services" shall mean and refer to any one or more of the following: Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication services or utilities, together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.09 Common Services Easements and Restrictions. The term or phrase "Common Services Easements and Restrictions" shall mean and refer to the Common Services Easements and Restrictions to which this Appendix A is attached, as amended or supplemented from time to time.

Section 1.10 Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.11 Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Section 1.12 Declarations. The term "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declaration of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time. Each Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.13 Development. The term "Development" shall mean and refer to the entire parcel of real property the legal description of which is attached hereto as Exhibit A, together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.13. To the extent development of additional real property is or may be contemplated by any or all of the Declarations, then (i) the term "Development" shall be liberally construed to include such real property when and as identified from time to time pursuant to a Supplement to Common Services Easements and Restrictions recorded as hereinafter provided, and (ii) such additional real property may from time to time be annexed to the real property described in Exhibit A and made part of the "Development" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except as provided in this Section 1.13), by the execution and recording in the Office of the Maricopa Recorder of a Supplement to Common Services Easements and Restrictions (the "Supplement to Common Services Easements and Restrictions") signed by Grantor (if Grantor owns the real property being annexed) and Grantee (with the terms "Grantor" and "Grantee" having the meanings provided in the Common Services Easements and Restrictions), and describing the real property to be annexed to Exhibit A (which real property shall be designated in an "Exhibit A-Supplement" included in such Supplement to Common Services Easements and Restrictions). The recording of said Supplement to Common Services Easements and Restrictions shall constitute and effectuate the annexation of the real property described such Exhibit A-Supplement to the "Development" property, making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A, as if said real property originally had been included in Exhibit A at the time of the initial recordation of the Common Services Easements and Restrictions. Notwithstanding anything to the contrary, if at the time of the recordation of any such Supplement to Common Services Easements and Restrictions, the real property described in such Exhibit A-Supplement is owned by a Person other than Grantee, then that Person must join with Grantee in the execution of such Supplement to Common Services Easements and Restrictions.

Section 1.14 E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.15. Excluded Devices. The term or phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology used primarily in the In Gross Easement Area will be an Excluded Device only to the extent required by law to be permitted (E.g. Section 207 of the Telecommunications Act of 1996 and 47 C.F.R. 1.4000) or to the extent authorized by the Declarations. Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

Section 1.16 Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Communication Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manholes, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Communication Services, including, without limitation, communication, video, data, e-commerce, Internet, community intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used.

Section 1.17 In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

Section 1.18 In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real property the legal description of which is attached hereto as Exhibit B together with such additional real property as is hereafter annexed thereto in accordance with the provisions of Section 1.18. If any Supplement to Common Services Easements and Restrictions is recorded pursuant to Section 1.13 which designates additional real property to be annexed to the Development pursuant to an Exhibit A-Supplement, then such Supplement to Common Services Easements and Restrictions shall also designate the real property (if any) included in such Exhibit A-Supplement that is to be made part of the "In Gross Easement Area" hereunder (which real property shall be designated in an Exhibit B-Supplement included in such Supplement to Common Services Easements and Restrictions). Upon recordation of such Supplement to Common Services Easements and Restrictions and Exhibit B-Supplement, the term "In Gross Easement Area" shall be liberally construed to include the real property identified in such Exhibit B-Supplement, and the real property identified in such Exhibit B-Supplement shall be part of the "In Gross Easement Area" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except for those approvals required for the recordation of a Supplement to Common Services Easements and Restrictions as provided in Section 1.13). The recording of said Supplement to Common Services Easements and Restrictions

shall constitute and effectuate the annexation of the real property described such Exhibit B-Supplement to the "In Gross Easement Area", making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A as if said real property originally had been included in Exhibit B at the time of the initial recordation of the Common Services Easements and Restrictions.

Section 1.19 Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.20 Mandatory Communication Service Provider. The term or phrase "Mandatory Communication Service Provider" shall mean and refer to a Communication Service Provider that provides one (1) or more of the Mandatory Communication Services. The initial Mandatory Communication Service Providers are listed on Exhibit C attached hereto, and are subject to change in accordance with Section 2.08 and Section 2.09 of the Common Services Easements and Restrictions.

Section 1.21 Mandatory Communication Services. The term or phrase "Mandatory Communication Services" shall mean and refer to the Communication Services set forth on Exhibit C attached hereto.

Section 1.22 Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Section 1.23 Master Declaration. The term or phrase "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation. The Master Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of the Master Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.24 Owner. The term "Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a platted lot, a development parcel or any other land within the Development, or their lessees, tenants or any other successors in interest.

Section 1.25 Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Communication Service Providers to establish Communication Services to an Owner's residential structure, building or other structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure (or building or other structure, as applicable) and upon and within the residential structure (or building or other structure, as applicable) as contemplated by the design for the initial construction thereof, as thereafter modified from time to time.

Section 1.26 Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area (however denominated) under any of the Declarations, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary

or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations and applicable law; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Section 1.27 Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Section 1.28 Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.29 Plats. The term "Plats" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time.

Section 1.30 Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the easement areas designated as "Multi-Use Easement" or "M.U.E." on the Plats.

Section 1.31 Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Section 1.32 Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Communication Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

Section 1.33 Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Section 1.34 Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:

- (a) All of the Platted Easement Area.
- (b) All of the Owner Access Area.
- (c) Each street or roadway created by a Plat that is private (as opposed to public) in nature and is owned (or is to be owned, pursuant to the terms of such Plat) by Vistancia Maintenance Corporation, any Association, or any other homeowners' or property owners' association established pursuant to a Declaration.
- (d) Those portions of the tracts and other areas constituting common areas (however denominated) under any of the Declarations (other than the private streets and private roadways described in subsection (c) above, which shall be governed by that subsection rather than this subsection (d)), to the extent reasonably necessary for the establishment of Communication Services and Facilities to serve the Owners.

Section 1.35 Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.36 Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.37 Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

Section 1.38 Village Declaration. The term or phrase "Village Declaration" shall mean and refer to each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time. Each Village Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Village Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.39 Visible From Neighboring Property. The term or phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of the In Gross Easement Area.

Section 1.40 Vistancia Maintenance Corporation. The term or phrase "Vistancia Maintenance Corporation" shall mean and refer to the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

ARTICLE II - MISCELLANEOUS AND CONSTRUCTION

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment, Termination or Alteration. Any agreement which incorporates this Appendix A may be altered, terminated or amended in whole or in part, at any time. Any such amendment, termination or alteration must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the agreement being amended, terminated or altered.

This Appendix A may at any time be altered, terminated or amended in whole or in part, as it relates to any agreement which incorporates this Appendix A. Any such amendment, termination or alteration with respect to this Appendix A (i) must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the applicable agreement which incorporates this Appendix A, and (ii) any such amendment, termination or alteration with respect to this Appendix A shall not affect or have any impact upon this Appendix A as it relates to any other agreement incorporating this Appendix A (unless and until this Appendix A is amended, terminated or altered by a written instrument executed by all Parties to such other agreement).

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unenforceable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unenforceable, or unenforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unenforceable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unenforceable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 2.04 Waiver. No delay or failure by any Party in exercising any rights under any agreement which incorporates this Appendix A, and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A, including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties thereto, shall be construed and governed exclusively according to the internal laws of the State of Arizona, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Arizona state courts located in Maricopa County, State of Arizona and of the federal courts with jurisdiction over Maricopa County, State of Arizona, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Arizona state courts located in Maricopa County, State of Arizona or of the federal courts with jurisdiction over Maricopa County, State of Arizona. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Arizona will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Maricopa County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented

or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the term of the agreement is continuing, or the exact date [day, month and year] that the term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" in any agreement which incorporates this Appendix A shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Maricopa County Superior Court, State of Arizona, is closed, then that obligation shall be performed on the next following regular business day.

Section 2.15 Obligation of Good Faith. The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 Not a Partnership. Nothing herein contained or contained in any agreement which incorporates this Appendix A shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 Exhibits, Appendices and Schedules. All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

SCHEDULE 1.01

Other Easements or Licenses

Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003.

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona and Partial Termination, Abandonment and Extinguishment of Easement recorded on December 24, 2003, in Instrument No. 2003-1728051, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions, and Restrictions for Vistancia, recorded on July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona.

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19, recorded in Book 655 of Maps, page 35, official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded October 10, 2003 as 2003-1423458 of official records of Maricopa County, Arizona and Certificate of Correction recorded December 9, 2003, as 2003-1668089 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A10A, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 33.

Final Plat for Vistancia Village A Parcel A12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 32.

Final Plat for Vistancia Village A Parcel A13, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 31.

Final Plat for Vistancia Village A Parcel A14, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 661 of Maps, Page 25 Arizona and Certificate of Correction recorded January 2, 2004 as 2004-0000466 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A19, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 39.

Final Plat for Vistancia Village A Parcel A20, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 3.

Final Plat for Vistancia Village A Parcel A32, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 34.

Final Plat for Vistancia Village A Parcel A33, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 29.

Final Plat for Vistancia Village A Parcel A36, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 30.

Final Plat for Vistancia Village A Parcel A37, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 662 of Maps, Page 26.

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor a percent of revenue, according to the following scale, received by Licensee as hereinafter provided. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate shall be calculated by dividing active customers by total homes (i.e., total SFRs and MFUs) passed. Penetration shall be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Local Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

The License Fee shall be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for payment of the License Fee.

All payments of the License Fees hereunder shall be payable to Licensor without demand at the address set forth in this License, or to such other address as Licensor may designate. Payments of License Fees shall be made during the Term of this License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to

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such term in the CMA.

LT-7

From: Curt Smith [csmith@sunbelt Holdings.com]
Sent: Tuesday, November 12, 2002 5:53 PM
To: Arthurs, Tisha (CCI-Phoenix)
Cc: Mark Hammons
Subject: RE: redlines



cox final redline.doc

I was able to create the redline I needed. It is attached.

Thanks for trying.

-----Original Message-----

From: Arthurs, Tisha (CCI-Phoenix) [mailto:Tisha.Arthurs@cox.com]
Sent: Tuesday, November 12, 2002 4:21 PM
To: Curt Smith
Cc: Mark Hammons
Subject: redlines

Gentlemen,

I'm afraid there is not one document that incorporates all changes. Below are the redlines in order, to the best of my memory.

<<CMA.doc>>

<<Shea Sunbelt Agreement redline send 1st 10-02.doc>> recital D was amended to say phone to be included at first move in as well.

<<draft from legal send 3rd 10-15-02.doc>> Still does not define "common area"

<<draft from legal send 4th 10-30-02.doc>>

<<final redlines.doc>>

I think these are in the order in which changes were made. You would not have necessarily seen all the changes as we were trying internally to get the agreement tweaked to final.

Legal is gone for the day and I wanted to get you something today. I know after looking at my notes that they do not have one draft with all the changes.

Please bare with me.

Best regards,
Tisha Arthurs
Cox Communications
Sr. Account Executive
6231322-7857

C01463

Shea/Sunbelt Holdings
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this day of 2002 COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea/Sunbelt Holdings, d/b/a _____, hereinafter "Master Developer",

Deleted: CO-MARKETING

Deleted: in the context of the following text

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of _____ of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

Deleted: Maricopa County

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development Phase of Vistancia. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

Deleted: Services

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

Deleted: financial ability and the

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service in Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operationally feasible.

Deleted: Maricopa County

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E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and provision of technology services (including, during the Initial Term, the Technology Services).

G. Whereas, the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows.

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:

(a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.

(b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.

(c) "Agreement Date" means the date first set forth in this CMA.

(d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.

(e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.

(f) "Contractors" means contractors, subcontractors, material providers and suppliers.

(g) "Cox" means CoxComm, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.

(h) "Cox High Speed Internet" means the Internet Service Cox provides.

(i) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

(j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.

(k) "Initial Term" has the meaning provided in Section 2.

(l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.

(m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.

(n) "Marketing Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.

(o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.

(p) "Master Developer" means Shra'Sandeh Pleasant Front L.L.C., an Arizona limited liability company.

(q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.

(r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).

(s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pal" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

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Section Break (Not Page)

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(l) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property

Declarator: Maricopa County.

(m) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant), or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.

(n) "Performance Default" has the meaning set forth in subsection 10(a)(i).

(o) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereinafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."

(p) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.

(q) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.

(r) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.

(s) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A.

Declarator: Maricopa County.

(t) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements, but the meaning of the term does not include Customer Premises equipment.

(u) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.

(dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2. Deleted: [redacted]

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declared under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed. Deleted: (AA)

(i) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA. Deleted: shall be Deleted: 15 Deleted: renewal term Deleted: renewal term

3. Easements and Access Rights

(a) Master Plan Utility (Technology Facilities) Easements & Access Rights. During the application and processing by Master Developer of each Parcel Plat during the Term of this CMA, it is contemplated that Master Developer will establish non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in conjunction with other public utility providers) or other similar use rights in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, as follows:

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to,

telecommunications services and internet services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising VistaNova or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and non-discriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

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(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within VistaNova by Cox, at the sole cost and expense of Cox.

(b) **Subdivision Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the easements and use rights provided for in this CMA are established, which easements shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities-SFR.** Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(aa) The SFRs shall have non-exclusive access to public easements and non-exclusive access to private easements.

(bb) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(cc) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

(dd) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement have the right to enter (by virtue of the easements reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this CMA, a nonexclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) **Pre-Wire Specifications.** Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

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(iv) **Post-CMA Closings.** As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) **License For Ingress & Egress to Subdivision Parcels.** With respect to any subdivision parcel that is conveyed by Master Developer in a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4 Technology Services & Technology Facilities Obligations of Cox

(a) **Preferred Right to Offer Technology Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or "MFUs" at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall

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grant to Cox upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon the completion of the build out of such phase and upon the consent of the Builder. Master Developers' payments will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2007.

(b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia, and the Turnover Date has occurred, i.e. and the Master Developer no longer maintains covenants, conditions and/or restrictions with respect to all Owners Associations within Vistancia. If the Premises are composed exclusively or primarily of SFRs, the foregoing compensation as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sunbelt maintains control of the HOA as granted in Vistancia's covenants, conditions and restrictions or maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sunbelt the above mentioned marketing compensation until the applicable Homeowner's Association for the Premises (the "HOA") converts to resident control (a "Conversion"). Upon a Conversion, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the HOA and, if the HOA continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the HOA. In the event that Shea/Sunbelt closes its sales complex at Vistancia (the "Sales Facility") prior to Conversion or if Shea/Sunbelt, in Cox's reasonable opinion, otherwise discontinues any of Shea/Sunbelt's marketing obligations hereunder, Cox shall cease payment of the marketing compensation hereunder.

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(c) Cox Obligation to Provide Technology Services. Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E.

(i) CATV. Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household that are available from time to time from the Local Exchange Carrier.

(iv) Data Service. Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

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(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2011, which shall constitute credit of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

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(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs, which shall be the responsibility of the applicable Neighborhood Builder(s) and the conduit installed by the Master Developer) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFRs, in compliance with the Pre-Wire Specifications attached as Exhibit D, (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

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(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(c) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to

terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer, any Neighborhood Builder or any Owners Association liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer, any Neighborhood Builder or any Owners Association as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the subject information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) **Cox High Speed Internet Demo.** One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA.**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the internet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(b)(iv).

(b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Technology Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) **Calculation and Payment of Marketing Compensation.**

Penetration rates will be based on Technology Services provided by Cox to SFRs built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made as set forth in Exhibit G.

(e) **Reporting by Neighborhood Builders.** During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the

Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plans processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area areas prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the designs for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same, and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

k. **Insurance; Indemnification; Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

(iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights in any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

(b) By Cox. Cox hereby represents and warrants to Vistancia as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(v) Compliance with Law. Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

10. Default and Remedies.

(a) Events of Default. Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) Performance Default. A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) Cox Additional Remedies. In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (c)

(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. Deleted: (a) Master

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. Termination and Partial Termination; Rights of Parties after Termination.

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 7 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(f) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

Delisted: Madison County

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter, (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) No Obstruction. Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder, or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(v) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox), and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox-;

(vi) **Destiation of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(vii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistaacians" and Master Developer shall remove all of its equipment used in the operation of "Vistaacia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistaneca; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

Deleted: (b)

(c) Cox. Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all of the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority, or to any transferee of the License or other legal authority of Cox to provide CATV to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligor party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of ample length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in pdf format attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

Master Developer

Shca/Sorbeth Holdings

Address:

By: _____

and required copy to
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

re: _____

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: _____

Howard Tagerman
VP of Business Operations

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Peoria ("Cox"), on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer.

(c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property.

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property.

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches.

~~Deleted: Maricopa County,~~
~~Deleted: Maricopa County,~~

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]



:2:

Exhibit B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plan will be designed, installed and activated to 750 MHz bidirectional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 300 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all requisite trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Technology Services. Advance participation in actual and pre-joint trench coordination efforts with Verizon and other exposed utilities is essential to limit joint trench trenching and disruption. Cox will install shallow conduit where appropriate based on anticipated Cox needs.
 - d) The provisions from the protocol to the SFR (Single Family Residence) Demarcation NID (Network Interface Device) shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and SFR NID. Developer will use reasonable efforts to enable Cox's access to every SFR NID. NID's will be network managed.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 1) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for intrusions. Data systems shall be compliant with all NIST/DOCSIS standards and provide for data traffic encryption.
- 4) Bandwidth: The network will be capable of delivering in accordance with the Technological & Service Standards published under the FCC and established franchise transmission.
- 5) Service Bandwidth Guarantee: In the event that the above are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - a) Split the affected outlets to lessen the number of homes served but without obligation to split below an average of 30 units per node.
 - b) Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimums.

Default: ENR081

Default: be designed and installed to meet the following minimum requirements:

Default: (1) Network. Plan activated to 750 MHz 2-way modified HFC Network with a fiber Ring-in-Ring backbone. Cox will install one or two additional one or three inch shallow conduits to enable additional Technology Services by Cox and/or Verizon Services. Subsequent Active devices will be limited to not more than 300 home average node and no more than six (6) coaxial amplifiers per coax etc.

(a) Video services will be offered in compliance with the ACC's and Bellco Standards of Service.

(b) RSM Hub and MFC. New Verizon hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling forward addition of new, and/or dedicated applications. Fiber to HFC conversion to Cox's chosen Telecommunications Center in Tucson as designated by Cox engineering.

(c) Redundant. Redundant interconnection with the CLECs, UCs and ISPs must be provided for system integrity and access to the public network.

(d) Network Schematic. The Verizon network schematic will be provided upon completion of the network design. Verizon must not copy or distribute the single copy provided to it in any format in violation of Cox's.

(e) Bandwidth. The network must be capable of delivery in accordance with the Technology.

A Service Bandwidth Guarantee under the FCC and established franchise commitments under the following:

(a) Video. Meet or exceed industry standards for quantity and quality of analog and digital cable programming.

(b) Data. Data network will be shared and monitored at the MFC and SOC.

(c) Voice. Minimum average capacity of 2.5 lines per house.

(d) Service Bandwidth Guarantee. In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node over one month's time, Cox shall in its cost:

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Revised: June

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/Builder Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(j) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(k) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings.

Delete: (1)

Delete:



EXHIBIT D

CATV/Data Service

Pre-Wire Specifications

Vintec's Residential Pre-Wiring Guidelines

INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Doublet foil, 60% braid, non-braided tape, flame retardant PVC jacket, meets NEC Article 820 V Rating, UL Listed).

CABLE TV & HIGH SPEED DATA WIRING

The CATV service must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

JG-45 type wire connectors must be used consistent with the manufacturer's recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

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1
1
1

Deleted: Use Crimp or rail
connection

Deleted: Twist-on and possible type F
connectors are not appropriate, as they
will create problems for digital video
services. Attempting the over all network
or existing signal history is violation of
FCC rules. Thus, push-on, spring or rail
connection connectors must be used 1

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall or shall cause its affiliated companies to develop, deliver and generally maintain the Technology Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")

Deleted:

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

Deleted:

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

Deleted:

3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

Deleted:

EXHIBIT F

Insurance Requirements

[to come]

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for it's marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, credits and tax & license.

Penetration	Payout
75%-79%	15%
80%-84%	16%
85%-89%	17%
90%-94%	18%
95%-100%	21%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

(1) Network. Plant activated to 750 Mhz 2-way modified HFC Network with a fiber Ring-in- Ring backbone. Cox will install one or two additional two or three inch shadow conduits to enable additional Technology Services by Cox and/or Technology Service Enhancements. Active devices will be limited to one power supply per 300 home average node and no more than five (5) coaxial amplifiers per cascade.

(a) Voice services will be offered in compliance with the ACC's and Bellcore Standards of Service

(b) RSM Hub and MTC. New Vistancia hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling future addition of new, and/or dedicated applications. Fiber or HFC connection to Cox's Master Telecommunications Center in Peoria or as designated by Cox engineering.

(c) Redundancy. Redundant interconnection with the ILECs, EXCs and ISPs must be provided for system integrity and access to the public network.

(2) Network Schematic The Vistancia network schematic will be provided upon completion of the network design. Vistancia must not copy or distribute the single copy provided as it is confidential information of Cox.

(3) Bandwidth. The network must be capable of delivery in accordance with the Technology & Service Standards established under the FCC and established franchised commitments under the following:

(a) Video. Meet or exceed industry standards for quantity and quality of analog and digital cable programming

(b) Data. Data network will be alarmed and monitored at the MTC and SOC.

(c) Voice. Minimum average capacity of 2.6 lines per house

(4) Service Bandwidth Guarantee. In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node over one month's time, Cox shall at its cost do one or more of the following:

(a) Split the affected node(s) to lessen the number of homes served (but without obligation to split below average of 50 units per node)

(b) Implement alternate modulation or compression techniques if technically practicable

(c) Open additional data channels; and/or

(d) Implement such other actions as Cox deems appropriate to meet the
flex consultation with the review by Master Developer.

LT-8

From: Kelley, Mary (CCI-Phoenix)
Sent: 11/21/2002 12:37:12 PM (Eastern Time)
To: Trickey, Linda (CCI-Atlanta)
CC: Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Attachments: Vistancia commercial draft redline 11-21-02.doc
Subject: FW: Vistancia Agreement

Redacted

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Thursday, November 21, 2002 10:40 AM
To: Kelley, Mary (CCI-Phoenix)
Cc: Mark Hammons; Rick Andreen (E-mail)
Subject: RE: Vistancia Agreement

Attached is a redline with my comments to pass along to the lawyer. These are in addition to having the revenue share piece addressed.
Thanks

-----Original Message-----

From: Kelley, Mary (CCI-Phoenix) [mailto:Mary.Kelley@cox.com]
Sent: Thursday, November 21, 2002 8:54 AM
To: Curt Smith
Cc: Carter, Robert (CCI-Phoenix); Trickey, Linda (CCI-Atlanta); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix)
Subject: Vistancia Agreement

Hi Curt,
I just spoke with the lawyer. She will make the following three changes in the agreement : 1) Term - 20 years 2) delete 4c and 3) add the revenue share piece previously submitted, by end of day today.
When I gave you the commercial agreement last Tuesday, we discussed that it was a draft due to the fact that you requested by November 12th. I asked the lawyer to finalize it so that it would no longer be a draft. She expects to complete that process by end of day tomorrow.
Thank you for your time and patience. As always, please call me at anytime.
Mary Kelley
Commercial Access Account Manager

C03193

504

6 Cox Business Services
Work 623-322-7472
Fax 623-322-7983

C03194

DRAFT - FOR DISCUSSION PURPOSES ONLY

Shea/Sunbelt Pleasant Point, LLC
vs
COXCOM, INC.
PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2002 between Cox Business Services, L.L.C. ("Cox") on behalf of its affiliates, and Shea Sunbelt Holdings Pleasant Point L.L.C., an Arizona limited liability company, d/b/a _____ a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to said commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and Cox or its affiliated entities will make such services available to commercial buildings in Vistancia upon the occupancy of the first building constructed in Vistancia.

Deleted: such entity will make the telephone
Deleted: when it is both technically, commercially and operationally feasible

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements or similar use rights, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement or similar use right and access to the Premises for the installation of the Cox Facilities and provision of Services.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows:

DRAFT - FOR DISCUSSION PURPOSES ONLY

AGREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox High Speed Internet" means the Internet Service Cox provides.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Developer" means Shea-Surbel Pleasant Point L.L.C., an Arizona limited liability company.
- (m) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property.
- (n) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.
- (o) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction

DRAFT - FOR DISCUSSION PURPOSES ONLY

over Vistancia or the applicable portion thereof. A Plot described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."

(p) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim as set forth in Exhibit C. Delete to:

(q) "Vistancia" means the commercial buildings within the master planned community being developed in Parris, Arizona, described in Recital A.

(r) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, jacks, cross connect panels, fiber/FI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements, but the meaning of the term does not include Customer Premises equipment.

(s) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.

(t) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(u) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of ~~twenty~~ 20 years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for two successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term." Delete to:
Delete to:

3. Easements and Access Rights.

(a) Master Plan Utility (Technology Facilities) Easements & Access Rights. During the application and processing by Master Developer of each Parcel Plat during the Term of this Agreement, it is contemplated that Master Developer will establish non-exclusive public utility easements or other similar type rights (which shall include a

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non-exclusive right to place Technology Facilities within the area, in conjunction with other public utility providers, in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, as follows:

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Deleted: or other similar use rights

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area, to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internet services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

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(ii) Right of Entry to Install Technology Facilities. During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas, established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

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(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the areas reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

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(b) Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the areas and use rights provided for in this Agreement are established, which areas shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

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(i) Technology Facilities. Non-exclusive public utility easements or other similar use rights in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) Non-Exclusive License to Cox. Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the areas reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace

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and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(ii) Pre-Wire Specifications. Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(c) License For Ingress & Egress to Commercial Parcels. With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) Form of Easements. The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) Repair of Improvements. Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the areas, and other rights reserved for or granted to Cox pursuant to this Section 3.

~~Deleted: easements~~
~~Deleted: , except for Backbone Conduit which shall be maintained and repaired by Master Developer.~~

4. Technology Services & Technology Facilities Obligations of Cox.

(a) Preferred Right to Offer Technology Services. During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) Future Effect of Agreement. Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) Cox Obligation to Provide Technology Services. Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D, and upon occupancy of the first such building in Vistancia.

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(i) CATV. Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service, provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical

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area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof.

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(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service, provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per user, but in no event shall Cox be required to exceed the number of telephone numbers per user, then are available from time to time from the Local Exchange Carrier.

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(iv) Data Service. Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services will be provided to each tenant upon initial occupancy.

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(i) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) Selection of Contractors. Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

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(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hook-up fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights**

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer, Master.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the internet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and

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implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or other similar ~~use~~ rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

(f) **Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit** according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least ~~six~~, (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

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(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Commercial Buildings**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically

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generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(c) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.

(iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

(b) By Cox. Cox hereby represents and warrants to Vistancia as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required

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licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

10. Default and Remedies:

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the non-defaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

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(d) *Cox Additional Remedies.* In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(e).

(e) *Master Developer Additional Remedies.* In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) *Termination.* The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) *Monetary Damages.* The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) *No Consequential Damages.* The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. *Termination and Partial Termination; Rights of Parties after Termination.*

(a) *Additional Rights to Terminate.* In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) *Cessation or Interruption of Technology Service.* In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) *Master Developer Determination.* If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement. Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) *Continuing Rights & Obligations.* After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

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(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements or similar use rights acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements or similar use rights. No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Poria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Poria or other applicable governmental right of way, with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner, or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Poria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plans which have been approved and accepted by Poria or other applicable governmental authority as of the date of such termination and (ii) such easements or similar use rights, which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-branding and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements or similar use rights granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox.

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Internet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to

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the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c).

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any

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entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the easements or rights in the areas where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

(c) Cox may assign Cox's interest in this Agreement and in any easement or similar use rights, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of the License or other legal authority of Cox to provide CATV to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

14. Miscellaneous.

(a) Amendments. No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the non-prevailing party.

(d) Unenforceability. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

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(c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claims for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless

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another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(0) Rules of Construction. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) Proprietary Information. Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ____.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement for Technology Facilities and Service as of the date first written above.

Shea Sunbelt Pleasant Point LLC

Cox Business Services, LLC

By: _____

By: _____

Its: _____

Robert Carter
Its: Vice President

and required copy to:
6720 N. Scarsdale Road

and required copy to:
2095 W. Pinnacle Peak Rd., Suite 110

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Suite 160
• Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

Phoenix, AZ 85027
Phone: (623) 322-7472
Facsimile: (623) 322-7983

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.

(b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.

(c) Owner shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.

Deleted: have
Deleted: 1:

(d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner.

(e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;

(f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;

(h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans thereof, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches.

(i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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DOBBT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities. At Master Developer's sole discretion, if such capital contribution is required, Master Developer may terminate this Agreement.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

1) Network:

To Be Determined

- 1) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Technology Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data systems shall be compliant with all MCNS/DCSIS standards and provide for data packet encryption.

3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service, and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

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EXHIBIT E

Insurance Requirements

To Be Determined

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A	
1	Vistancia
2	Summary of Changes from JECB
3	
4	
5	
6	
7	Added calculation of Shea IRR on CF Summary



LT-9

From: Kelley, Mary (CCI-Phoenix)
Sent: 11/21/2002 5:44:33 PM (Eastern Time)
To: 'csmith@sunbeltholdings.com'
CC: Trickey, Linda (CCI-Atlanta); Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Attachments: Vistancia with 3 changes 11-21.doc, Vistancia commercial draft.doc
Subject: FW: Vistancia

Hi Curt,
As promised, I am forwarding the changes that we discussed previously: the term mirrors the residential agreement, 4 c. is deleted and the Revenue Share is included. Linda added number 9.
Please review the entity name in the following agreement as Linda pointed out it is different from the residential agreement but know that may be the case. Linda is scheduled to look at the comments you forwarded tomorrow.
Please review the highlighted areas at your earliest convenience and let me know if you have any comment(s) so I can review as soon as possible.
Thank you.

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----
From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, November 21, 2002 3:40 PM
To: Kelley, Mary (CCI-Phoenix)
Subject: Vistancia

Linda Trickey
Corporate Counsel
Cox Communications, Inc.
Tel: (404) 269-7496
fax: (404) 843-5845
email: linda.trickey@cox.com

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Shea/Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2002 between Cox Business Services, LLC ("Cox") on behalf of its affiliates, located at _____ and Shea/Sunbelt Pleasant Point LLC, an Arizona limited liability company, located at _____ ("Master Developer").

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to sell commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to commercial buildings in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows:

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AGREEMENT

1. Definitions

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox High Speed Internet" means the Internet Service Cox provides.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Developer" means Shea/Sumbelt Pleasant Point L.L.C., an Arizona limited liability company

~~(m) "Monthly Recurring Revenue" or "MRR" shall mean all revenues received by Cox or by their successors and assigns) for the transmission or distribution of the Information Service through the Cox Network located within Vistancia to the commercial buildings only, including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to tenants but excluding and deducting from such revenues (if the same were included therein) installation and construction fees, sales promotional or bundling discounts, revenue from residential dwellings (such as apartments, condos, and single family homes), internet charges, bad debts, franchise fees or other governmental charges, utility charges, netcom fund charges, 911 fees, or other governmental authorized assessments (howsoever described) and network access charges.~~

- (n) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property

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- (o) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.
- (p) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (q) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in set forth in Exhibit C.
- (r) "Vistancia" means the commercial Buildings within the master planned community being developed in Peoria, Arizona, described in Recital A.
- (s) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (t) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.
- (u) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).
- (v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

~~Renewal Term~~

~~The initial term of this Agreement (the Initial Term) shall be for a period of twenty (20) years commencing on the Agreement Date and the end of the Initial Term. This Agreement will automatically renew for successive terms of five years thereafter. The Renewal Term begins when the party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect as applicable). The Initial Term~~

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~~and any Renewal Term are subject to early terminations provided in Sections 9 and 10 of this Agreement. For initial Term and any Renewal Term are collectively referred to as the Term.~~

3. Easements and Access Rights.

(a) **Master Plan Utility (Technology Facilities) Easements & Access Rights.** During the application and processing by Master Developer of each Parcel Plat during the Term of this Agreement, it is contemplated that Master Developer will establish non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in conjunction with other public utility providers) or other similar use rights in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, as follows:

(i) **Technology Facilities-Master Developer.** Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

(b) **Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the easements and use rights provided for in this Agreement are established, which easements shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities.** Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and

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equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(iii) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(c) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3, except for Backbone Conduit which shall be maintained and repaired by Master Developer.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D.

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(i) **CATV.** Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household that are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services can be provided to each tenant upon initial occupancy.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

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(iii) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) Ownership and Maintenance. Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) Early Termination Upon Cessation of Service. In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) Individual Subscriber Basis. Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) Billing Subscribers. Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Exclusive Marketing Rights

(a) Exclusive Rights of Cox During the Term of this Agreement:

(i) Endorsement by Master Developer. Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) Marketing and Promotion of Technology Services. Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer. Master.

(iii) Similar Agreements and Co-Branding. Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing,

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Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

(f) **Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.**

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least twelve (12) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to

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offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Commercial Buildings**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

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Payment Obligations. In consideration for the marketing assistance and the construction of the Backbone, Cox and the performance of its obligations under this Agreement, Cox shall pay Master Developer a percentage fee as set forth below. Percentage fee. Cox shall pay Master Developer the Percentage Fee on the following schedule for the MRC received from certain Multi-Master Developer's commercial buildings through the provision of Technology Services:

MRC Revenue Received by Cox U.S. Applicable Percentage Fee

0% of MRC
10% of MRC
15% of MRC
20% of MRC
25% of MRC

Once the MRC at a particular Master Developer's commercial buildings reaches a higher Percentage Fee payment threshold, all MRC shall be entitled to the higher payment percentage.

Payments. All payments of the Percentage Fee shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the term of this Agreement within ninety (90) days from the end of the month in which Cox fails to make payments as required herein. Master Developer shall be entitled to interest at the rate of 1% per month and paid.

Excluded MRC. In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Technology Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

Resale of Lease for Communications Services. The Parties acknowledge that Cox may wish to be permitted to resell or lease to other Cox or allow use of portions of the Cox Network to third party providers to allow such providers to provision communications services on the Cox Network to tenants in Master Developer's buildings. In such event, Master Developer shall be permitted to receive a portion of the net revenue from such providers. The MRC shall be subject to payment of Percentage Fees under this Agreement. In the event a third party provider provides telecommunication services or communications facilities on the Cox Network, the deemed assignment, sale or transfer of the Cox Network or a delegation or assignment of Cox's rights under Section 7 of this Agreement.

10. Insurance; Indemnification; Waiver of Subrogation.

(a) Required Insurance. During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) Damage or Destruction by Master Developer. In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) Damage or Destruction by Cox. In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) No Liability for Computer Damage. Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

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(e) Waiver of Subrogation. Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

II. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) Organization and Authority. Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) Due Execution. Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.

(iii) No Conflict. Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) No Litigation. There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) Compliance with Law. Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.

(vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

(b) By Cox. Cox hereby represents and warrants to Vistancia as follows:

(i) Organization and Authority. Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

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(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

12. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(c).

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(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

13. Termination and Partial Termination; Rights of Parties after Termination.

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology

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(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages; obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

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Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such casements. No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) No Obstruction. Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner, or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such casements which have been established for the non-exclusive use of Cox.

(c) Unwinding. Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marking and other relationships established under this Agreement, including, without limitation:

(i) Removal of Property. Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within casements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

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(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses, provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties, and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"), (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such

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assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

(c) Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority, or to any transferee of the License or other legal authority of Cox to provide CATV to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

16. Miscellaneous.

(a) Amendments. No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered hereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

(d) Unenforceability. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

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(f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and

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other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(0) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ____.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Agreement for Technology Facilities and Service as of the date first written above.

Shea/Sunbelt Pleasant Point LLC

Cox Comm, Inc., a Delaware corporation
d/b/a Cox Communications, Inc.

[Redacted signature area]

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Address: [REDACTED] Address: [REDACTED]
2000 [REDACTED] 2000 [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.

(b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.

(c) Owner shall submit its construction plans to Cox at least twelve (12) months prior to Cox commencing installation of the Technology Facilities.

(d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner.

(e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;

(f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;

(h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

1) Network:

To Be Determined

- 1) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Technology Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

DRAFT - FOR DISCUSSION PURPOSES ONLY

EXHIBIT E

Insurance Requirements

To Be Determined

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.,
AND COX ARIZONA TELCOM, LLC.

) DOCKET NO. T-03471A-05-0064
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ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

DIRECT TESTIMONY

OF

LINDA TRICKEY

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

ATTACHMENTS

LT-1 Through LT-27

2 of 2

April 5, 2006

LT-10

From: Crosby, Sheila (CCI-Phoenix)
Sent: Tuesday, November 26, 2002 1:38 PM
To: Rizley, Steve (CCI-Phoenix)
Cc: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Tigerman, Howard (CCI-Phoenix)
Subject: FW: Vistancia residential agreement

Attachments: The final agreement.doc

Steve, Attached is the final residential agreement for Vistancia. We are going to schedule a meeting as soon as we get the okay on the commercial agreement.

Sheila Crosby
Vice President of Sales
Desk: 623-322-7922
Fax: 623-322-7918
Mobile: 602-694-0745
Sheila.Crosby@cox.com

-----Original Message-----
From: Arthurs, Tisha (CCI-Phoenix)
Sent: Monday, November 25, 2002 10:07 AM
To: Crosby, Sheila (CCI-Phoenix)
Cc: Drake, Paul (CCI-Phoenix)
Subject: Vistancia residential agreement

Sheila,
We have finished the residential agreement. I am attaching it so that you can review it and forward it on to Steve to review before I schedule us to go out and sign. The commercial agreement sounds like it is about 98% complete. I would like to schedule a time for you, Steve, Paul and myself to go out after the commercial agreement is finished and have both agreements signed at the same time. When I receive the final commercial agreement from Mary I will forward it to you for you and Steve to review as well.



The final agreement.doc (131 K)

Thanks again for all your support during this brutal process.

Best regards,
Tisha Arthurs
Cox Communications
Sr. Account Executive
(623)322-7857

C04636

Shea/Sunbelt Holdings
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this ___ day of _____, 2002 COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea/Sunbelt Holdings, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development Phase of Vistancia. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia upon occupancy of first unit built.

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

G. Whereas, the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows:

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:

(a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.

- (b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.
- (h) "Cox High Speed Internet" means the Internet Service Cox provides.
- (i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (k) "Initial Term" has the meaning provided in Section 2.
- (l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (n) "Marketing-Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
- (o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
- (p) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company
- (q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.
- (r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).
- (s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

- (l) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property
- (o) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (v) "Performance Default" has the meaning set forth in subsection 10(a)(ii).
- (w) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (h) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (x) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (y) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (z) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (aa) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A.
- (bb) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/FI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (cc) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.

(dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ii) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. Easements and Access Rights.

(a) Master Plan Utility (Technology Facilities) Easements & Access Rights. During the application and processing by Master Developer of each Parcel Plat during the Term of this CMA, it is contemplated that Master Developer will establish non-exclusive public utility easements or similar use right areas (which shall include a non-exclusive right to place Technology Facilities within the area) in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, as follows:

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of

underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the areas reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within Vistancia by Cox, at the sole cost and expense of Cox.

(b) **Subdivision Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements or similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the areas and use rights provided for in this CMA are established, which areas shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities-SFR.** Non-exclusive public utility easements or similar use rights in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(aa) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(bb) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

(cc) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement or use right have the right to enter (by virtue of the easements or use rights reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this CMA, a nonexclusive license to use portions of the areas reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the

Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) **Pre-Wire Specifications.** Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(iv) **Post-CMA Closings.** As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) **License For Ingress & Egress to Subdivision Parcels.** With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or MFUs at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon occupancy of the first home in that phase and

upon the consent of the Builder. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia.

The compensation as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sunbelt maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sunbelt the above mentioned marketing compensation. Upon the turnover of control of the Vistancia Maintenance Corporation to the members, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

- (c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) **CATV.** Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis.

during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and the installation of conduit, which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement

regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer, any Neighborhood Builder or any Owners Association liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer, any Neighborhood Builder or any Owners Association as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) **Cox High Speed Internet Demo.** One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. Exclusive Marketing Rights and Marketing Incentive Fees.

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or

gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

(b) Cox Marketing and Promotion Effort. Cox shall undertake to market and promote the Technology Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) Calculation and Payment of Marketing Compensation.

Calculation and payment of Marketing Compensation will be made as set forth in Exhibit G.

(e) Reporting by Neighborhood Builders. During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) Governmental Permits. Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(c) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

(iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Vistancia as follows:

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.

(ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.

(iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.

(iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

10. **Default and Remedies.**

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (c)

(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. Termination and Partial Termination; Rights of Parties after Termination.

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder; or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should

have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox-;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment

(a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the utility easements where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

(c) Cox. Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of the License or other legal authority of Cox to provide CATV to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or

legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in teh formatted attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Address:
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

Shea/Sunbelt Holdings
By: _____

Its: _____

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

State of Arizona)
County of Maricopa)

Subscribed and sworn to before me this ____ day
of _____, 2002, at Phoenix, AZ.

Notary Public
My Commission Expires: _____

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: _____
J. Steven Rizley
General Manager and VP

State of Arizona)
County of Maricopa)

Subscribed and sworn to before me this ____ day
of _____, 2002, at Phoenix, AZ.

Notary Public
My Commission Expires: _____

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

1) Network:

- a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
- b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
- c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Technology Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
- d) The provisioning from the pedestal, to the SFR (Single Family Residence) Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and SFR NID. Developer will use reasonable efforts to enable Cox's access to every SFR NID. NID's will be network powered.
- e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.

- 1) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 5) Service Bandwidth Guarantee: In the event that the above are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - a) Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - b) Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimums.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings

EXHIBIT D

CATV/Data Service

Pre-Wire Specifications

Vistancia Residential Pre-Wiring Guidelines

INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TV & HIGH SPEED DATA WIRING

The CATV service must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT F

Insurance Requirements

[to come]

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, guides and tax & license.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.



LT-11

From: Trickey, Linda (CCI-Atlanta)
Sent: Wednesday, March 12, 2003 3:29 PM
To: Arthurs, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix)
Subject: RE: Cox Agreements

Redacted

-----Original Message-----
From: Arthurs, Tisha (CCI-Phoenix)
Sent: Tuesday, March 11, 2003 4:14 PM
To: Kelley, Mary (CCI-Phoenix)
Cc: Trickey, Linda (CCI-Atlanta)
Subject: FW: Cox Agreements

Redacted

Tisha Arthurs
Cox Communications
Sr. Account Executive
(623)322-7857

-----Original Message-----
From: Mark Hammons [mailto:mhammons@sunbeltholdings.com]
Sent: Tuesday, March 11, 2003 1:30 PM
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Cc: Curt Smith
Subject: FW: Cox Agreements

<< File: AGM_COX_4_cox_res_finaldraft_03-10-03.doc >> << File: AGM_cox_comm_3
finaldraft_03-10-03.DOC >> << File: DVComparison_AGM_COX_2_cox_res_finaldraft_CLEAN
(1-28-03)-AGM_COX_4_cox_res_finaldraft_03-10-03.doc >> << File:
DVComparison_AGM_cox_comm_1_finaldraft_03-10-03)-AGM_cox_comm_3_finaldraft_03-10-03.doc
>> A << File: LIC_JM_3_Non-ExclusiveLicenseAgreement(Vistancia)-Commercial_03-04-03).doc
>> G << File: LIC_JM_3_Non-ExclusiveLicenseAgreement(Vistancia)-Residential_03-04-03).doc
>> H COX_4_cox_res_finaldraft_03-10-03.doc>> <<AGM_cox_comm_3
finaldraft_03-10-03).DOC>> <<DVComparison_AGM_COX_2_cox_res_finaldraft_CLEAN_03-10-03)-
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finaldraft_03-10-03)-AGM_cox_comm_3_finaldraft_03-10-03).doc>> <<LIC_JM_3_Non-
ExclusiveLicenseAgreement(Vistancia)-Commercial_03-04-03).doc>> <<LIC_JM_3_Non-
ExclusiveLicenseAgreement(Vistancia)-Residential_03-04-03).doc>> At long last...here are
the residential and commercial agreements for Vistancia as well as the license agreement
for your review. Please let me know if you would like to sit down with Curt and I to
review.
Thanks
Mark

1

C01953







> -----Original Message-----

> From: Curt Smith
> Sent: Tuesday, March 11, 2003 7:45 AM
> To: Mark Hammons
> Subject: Cox Agreements

>
> Here are the latest versions. Included are redlines of the Residential and Commercial agreements and clean license agreements.

> > <<AGM_COX_4_cox_res_finaldraft_03-10-03.doc>> > > <<AGM_cox_comm_3
finaldraft_03-10-03.DOC>> > > <<DVComparison_AGM_COX_2_cox_res_finaldraft_CLEAN
{1-28-03}-AGM_COX_4_cox_res_finaldraft_03-10-03.doc>> > > <<DVComparison_AGM_cox_comm_1
finaldraft_{1-21-03}-AGM_cox_comm_3_finaldraft_03-10-03.doc>> > > <<LIC_JM_3 Non-
ExclusiveLicenseAgreement(Vistancia)-Commercial_03-04-03.doc>> > > <<LIC_JM_3 Non-
ExclusiveLicenseAgreement(Vistancia)-Residential_03-04-03.doc>>

From: Mark Hammons [mhammons@sunbeltholdings.com]
Sent: Tuesday, March 11, 2003 1:30 PM
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Cc: Curt Smith
Subject: FW: Cox Agreements

     
AGM_COX_4 AGM_cox_comm_3 DVComparison_AG DVComparison_AG LIC_JM_3 LIC_JM_3
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At long last...here are the residential and commercial agreements for Vistancia as well as the license agreement for your review. Please let me know if you would like to sit down with Curt and I to review.

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Mark

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From: Curt Smith
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Subject: Cox Agreements

Here are the latest versions. Included are redlines of the Residential and Commercial agreements and clean licensc agreements.

<<AGM_COX_4 cox_res_finaldraft_03-10-03.doc>>>> <<AGM_cox_comm_3 finaldraft_03-10-03.DOC>>>> <<DVComparison_AGM_COX_2 cox_res_finaldraft_CLEAN_1-28-03>>>> <<AGM_COX_4 cox_res_finaldraft_03-10-03.doc>>>> <<DVComparison_AGM_cox_comm_1 finaldraft_1-21-03>>>> <<AGM_cox_comm_3 finaldraft_03-10-03.doc>>>> <<LIC_JM_3 Non-ExclusiveLicenseAgreement(Vistancia)-Commercial_03-04-03.doc>>>> <<LIC_JM_3 Non-ExclusiveLicenseAgreement(Vistancia)-Residential_03-04-03.doc>>>>

C01857

Shea Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT FOR TECHNOLOGY FACILITIES AND COMMUNICATION SERVICES ("CMA" ("CMA")) is entered into this ___ day of ___, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of ~~itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").~~

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of the City of Peoria Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0286718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time ("the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Covered Property Development. Master Developer will pay Cox a capital contribution of \$2,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to Vistancia residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by a Shea Homes Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family-residents and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer has subjected the Covered Property or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number 2002 (the "CSER") and the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number (the "License").
- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.

- G. Whereas, the Master Developer Access Entity agrees to grant Cox the Non-Exclusive License.
- II. Whereas the Master Developer anticipates transferring development parcels within (or other portions of Vistancia) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services Provided/provided by Cox within Vistancia.
- ~~II. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.~~

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows:

AGREEMENT

- I. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" ~~The term or phrase "Cable Television Services" shall mean and refer to~~ the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox, ~~(and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).~~
 - (g) "Common Area" means the area of the Premises Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.

- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) ~~"Covered Property" shall mean the Development.~~
- (l) (j) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (m) (n) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, ~~state~~ State of Arizona, as Instrument Number ~~---~~ 2001 ~~---~~, as amended from time to time.
- (n) (o) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (o) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (p) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (q) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing for marketing the Communication Services at Vistancia.
- (r) "Master Developer" means Shen/Sunbelt Pleasant Point ~~L.L.C., an Arizona, L.L.C., a Delaware~~ limited liability company, its successors and permitted assigns.
- (s) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (t) "Neighborhood Builder" means any person or entity ~~firm~~ engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer ~~off~~ a development parcel, a "super-pad" or platted lots, within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (u) "Official Records" means the official records of the ~~City of Peoria Recorder for Maricopa County,~~ Arizona, pertaining to real property.
- (v) "Home Owners Association" means the ~~Vistancia Community~~ each Village Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Services, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as ~~Declarant~~ or, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of Vistancia the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer in accordance with the Master Declaration and the applicable Village Declaration for the purpose of,

among other things, the administration and maintenance of common area tracts within all or any portion of ~~Vistancia~~ the Development.

(v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder in Instrument Number 2003- , as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.

(w) (+) "Plat" shall mean and refer collectively to all of the Plats recorded subdivision plats and maps of dedication that subdivide the Development as and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia ~~the Development~~ or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets, public and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over Vistancia ~~to the Development~~ or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.

(x) (+) "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.

(y) (+) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.

(z) (+) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.

(aa)(z) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.

(bb)(aa) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.

(cc)(bb) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing ~~as such~~ Home Owners Association, on which Master Developer ~~the declarant's~~ voting control ~~of over~~ such Home Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(dd)(ee) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological conditions, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surge, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ee) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(gg)(dd) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

L. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the ~~(each such five year term being hereinafter referred to as a "Renewal Term")~~, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The ~~Initial~~Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

(a) Development Process. ~~As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel-Plat, the recording of Declarations (including, without limitation, the (i) Master Declaration of Covenants, Conditions and Restrictions for Vistancia, in general, (ii) Declaration of Covenants, Conditions and Restrictions, Assessments, Charges, Servitudes, Licenses, Reservations and Easements for each Mountain View Village, and (iii) the Village Declaration, and all similar Declarations and filings contemplated by (i) above the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.~~

(b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this CMA by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

- (b)-(i) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
- (c)-(ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement any rights granted under the Non-Exclusive License have the right to enter upon (by virtue of the easements reserved hereunder) Non-Exclusive License or otherwise upon any portion of a lot on which any SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (d)-(iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such license, easement or use any rights granted under the Non-Exclusive License have the right to enter (by virtue of the licenses, easements or use rights reserved hereunder) Non-Exclusive Licenses or otherwise into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (e)-(iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of its/their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not create or lessen the rights conveyed under the CSER or the Non-Exclusive License.
- (f)-(v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (g)-(vi) Pre-Wire Specifications. Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

(d) ~~(b)~~-Post-CMA Closings. As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause these Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b).

(e) ~~(f)~~-Repair of Improvements. Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to the this CMA and/or the Non-Exclusive License.

1. Communication Services & Technology Facilities Obligations of Cox.

(a) Preferred Right to Offer Communication Services. During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and Multi-Family Units, i.e. "MFUs" or MDUs at Vistancia MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars this CMA, the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of facilities Technology Facilities for Cox to offer Communication Services at the initial phase of the Vistancia development Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the development Development upon occupancy of the first home in that phase and upon the consent of the Builder. Master Developer's Developer's payment will be made in four equal payments of \$500,000.00 installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter beginning January, commencing April 1, 2003.

(b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within Vistancia the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, or (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of Vistancia the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and

acknowledges that the preferred rights granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in Vistancia the Development. The compensation as set forth in Exhibit G (the "Marketing Compensation") will be paid to Master Developer Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned marketing compensation Marketing Compensation. Upon the turnover of control of the Turnover Date for Vistancia Maintenance Corporation to the members, this Agreement CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

- (c) Cox Obligation to Provide Communication Services. Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of Vistancia the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) Cable Television Services. Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) Service Standard & Upgrades. Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) Telephone Service. Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer telephone service Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) Internet Access Service. Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within Vistancia the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof. Notwithstanding the foregoing, Master Developer shall grant to Cox the sum of Three Million and No/100 Dollars, (\$3,000,000.00) as provided in

subsection 4(b) (payable pursuant to subsection 4(b) in four equal payments of \$500,000 installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter beginning January 1, 2003, commencing April 1, 2003), which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area (consisting of Village A and Trilogy).

- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of Vistancia the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia the Development (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia the Development or leave such Technology Facilities

in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder ~~or~~, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder ~~or~~, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
 - (~~n~~) (i) Digital Cable Television Service. One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center.
 - (~~o~~) (ii) Cox High Speed Internet Demo. One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center.
 - (~~p~~) (iii) Signage at Point of Delivery. Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

- (a) **Exclusive Rights of Cox.** During the Term of this CMA:

- (i) Endorsement by Master Developer. Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
- (ii) Marketing and Promotion of Communication Services. Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;
- (iii) Similar Agreements and Co-Branding. Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of communication services Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv) commercial.
- (iv) Most Favored Nations. Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA) or (b) provides for any marketing compensation which taken individually (as to an individual SFR or MFI) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA) or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

- (b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.
- (c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.
- (d) **Reporting by Neighborhood Builders.** During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.
- (e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

- (c) Cooperation in use of Technology Easements and similar-use-right areas-Similar Use Right Areas. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales-Centers/sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching), a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- (a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install as Vistancia the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective

coordination and cooperation by the respective parties in the performance of the development work to be performed by each. ~~Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation in any Technology Facility.~~ Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation in any Technology Facility within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no ~~Warranty~~ warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to such potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer ~~or its~~ agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox ~~or its~~ agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of

any electronically generated or stored data or for damage to computers or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

- (c) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

1. **Representations and Warranties**

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of ~~Arizona~~ Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of ~~communication services~~ Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services on any parcel of the property hereunder, prior to the Agreement Date.

- (b) **By Cox.** Cox hereby represents and warrants to Vistancia as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) By Access Entity. Access Entity hereby represents and warrants to Cox as follows:

- (i) Organization and Authority. Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.**
- (ii) Due Execution. Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.**
- (iii) No Conflict. Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.**
- (iv) No Litigation. There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this CMA and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.**

(v) Compliance with Law. Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.

(vi) No Conflicting Rights. Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. Default and Remedies.

- (a) Events of Default. Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
- (i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) Performance Default. A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) Cox Additional Remedies. In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

(i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. Termination and Partial Termination; Rights of Parties after Termination.

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 7 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

- (i) ~~Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise. Other Termination or Expiration. From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default); (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all easements required by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such easements/Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under its Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs in Vistancia located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License Agreement; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue to continue subscribing to Cox's Communications Services.~~
- (ii) No Obstruction. Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.
- (c) Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
- (i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona

Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

- (f) Award Final. Any award rendered by the arbitration panel ~~shall~~ be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent ~~jurisdiction~~ jurisdiction.

13. Assignment.

- (a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed ~~if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA~~, except as provided in subsections (b) or (c).
- (b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to ~~the Access Entity or to any other entity~~ that controls the ~~utility~~ utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.
- (c) Cox. Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of the ~~License~~ Cox's license (or other legal authority of Cox) to provide Cable Television Services ~~to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.~~

14. Miscellaneous.

- (a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) Governing Law. This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) Notices. Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) Relationship of Parties. The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) Third Party Beneficiaries. Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) Waiver. No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure.

provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

- (f) Recordings. ~~Vistaone's~~ Master Developer and/or Building Owner agrees to execute and record documents which will ~~establish~~ establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.I.L.S.S.F." areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for the provision of Technology Facilities and Communication Service Co-Marketing Agreement as of the date first written above.

"Master Developer" - Shea Sunbelt Pleasant Point, LLC

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

SHEA SUNBELT PLEASANT POINT, L.L.C., a
Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management
Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis F. Smith, its Chief
Operating Officer

"Cox" - COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

Address: 20401 N. 29th Avenue

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: _____

Phoenix, AZ 85719

J. Steven Rizley
General Manager and VP

"Access Entity"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 985-9778
Facsimile: (480) 985-1419

and required copy to

8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Shea Sunbelt Pleasant Point, L.L.C., a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By:

its:

By: Sunbelt Pleasant Point Investors, L.L.C.,
an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona
limited
liability limited partnership, its
Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation,

its

General Partner

By:

Curtis E. Smith, its Chief
Operating Officer

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated/affiliates entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Coa network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
 - 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
 - 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
 - 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- ~~5)-5)~~ Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
- (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia's partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party,

EXHIBIT C

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- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT D

**Cable Television/Internet Access Services Pre-Wire Specifications
Vistancia Residential Pre-Wiring Guidelines**

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.

2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.

3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.

4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

Shea Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT ("CMA") is entered into this ___ day of ___, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer has subjected all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona as Instrument Number 2003-___ (the "CSER").
- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the rights to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- G. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as

"subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.

- H. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows:

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
 - (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
 - (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
 - (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
 - (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.

- (l) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as "Cox High Speed Internet."
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea Sonbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (t) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (u) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder in Instrument Number 2003-_____, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (w) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and

which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.

- (x) "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.
- (y) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (z) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (aa) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (bb) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (dd) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure of

delay by another party in the performance of an act that must be performed before the action that is delayed.

- (cc) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (gg) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.
- (hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

- (a) Development Process. As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.
- (b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this CMA by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
 - (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report

pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.

- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
 - (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License.
 - (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).
- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

i. Communication Services & Technology Facilities Obligations of Cox.

- (a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the

Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of this CMA, the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. The compensation as set forth in Exhibit C (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

- (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
- (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof. Notwithstanding the foregoing, Master Developer shall grant to Cox the sum of Three Million and No/100 Dollars (\$3,000,000.00) as provided in subsection 4(b) (payable pursuant to subsection 4(b)) in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003), which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development (consisting of Village A and Trilogy).
- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit

D: (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

(m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:

- (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;
- (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;
- (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

i. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox.** During the Term of this CMA:

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;
- (iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access

Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial).

- (iv) **Most Favored Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C (including, without limitation, amendments or supplements thereto, which may be subsequent to the date of this CMA), or (b) provides for any marketing compensation which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C (including, without limitation, amendments or supplements thereto, which may be subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.
- (b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.
- (c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit C, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.
- (d) **Reporting by Neighborhood Builders.** During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.
- (e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.
6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. **Technology Facilities Cooperation & Coordination by Cox.**

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in

discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
 - (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
 - (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with

the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other providers of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Vistancia as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of

Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.

- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this CMA and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the

applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

- (d) Cox Additional Remedies. In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) CSER and License. No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. Termination and Partial Termination; Rights of Parties after Termination.

- (a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
 - (i) Cessation or Interruption of Communication Service. In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their

differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA,
 - (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and
 - (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so

named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's

license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.

- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this

CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Co-Marketing Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

**SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company**

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

"Cox"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

**COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix**

By: _____
J. Steven Rizley
General Manager and VP

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Technology Services in accordance with the following applicable industry benchmark practices and standards "Technology & Service Standards")

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

"Access Entity"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: **Shea Sunbelt Pleasant Point, LLC**, a Delaware
limited liability company, its Manager

By: **Shea Homes Southwest, Inc.**, an Arizona
corporation, its Member

By: _____
Its: _____

By: **Sunbelt Pleasant Point Investors, L.L.C.**, an
Arizona limited liability company, its
Member

By: **Sunbelt PP, L.L.P.**, an Arizona limited
liability limited partnership, its
Manager

By: **Sunbelt Holdings Management,
Inc.**, an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT D

**Cable Television/Internet Access Services Pre-Wire Specifications
Vistancia Residential Pre-Wiring Guidelines**

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards "Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

Shea Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this ____ day of ____, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 2095 West Pinnacle Peak Road, Suite 110, Phoenix, AZ 85027, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- D. Whereas the Master Developer has subjected all or a portion of Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona as Instrument Number 2003-____ (the "CSER").
- E. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, the Access Entity and Cox agree as follows:

AGREEMENT

I. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (k) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.

- (l) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- (m) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to any tenant, Owner or occupant of a Building, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, revenue from residential dwellings (such as apartments, condos, and single family homes), interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (n) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- (o) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (p) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (q) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (r) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (s) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (t) "Communication Services" shall have the meaning set forth in Appendix A of the CSER, with respect to the Buildings within Vistancia.
- (u) "Telephone Service" means Telephone Service (local) and Telephone Service (long distance).
- (v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure

or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

- (w) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (x) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (y) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this Agreement by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owners thereof.

- (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License.
- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

I. Communication Services & Technology Facilities Obligations of Cox.

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
 - (i) **Cable Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

- (ii) **Service Standard & Upgrades.** Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when other products become commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
 - (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (f) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS

route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
 - (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
 - (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication

Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) **Most Favored Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation which, in the aggregate, allows a lower payment than is provided for the Percentage Fee under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage Payment under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to

enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.

- (c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. **Technology Facilities Cooperation & Coordination by Cox.**

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER) and/or 2) permit such Owner, tenant or other occupant to advance the cost of construction and/or materials on behalf of Cox and thereafter offset the amounts so advanced against fees payable to Cox for Communication Services provided to the Building. If an Owner, tenant or other occupant chooses the first option (and such option is permitted under the terms of the CSER), then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the

design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
 - (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
 - (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
 - (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
 - (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.
8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 8) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner,

which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable Percentage Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee which shall apply to all MRC attributable to that Qualifying Building.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
 - (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.
9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.
10. **Insurance; Indemnification; Waiver of Subrogation.**
- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
 - (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys' fees) arising out of a breach of this warranty.

11. **Representations and Warranties**

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
 - (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
 - (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
 - (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
 - (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.
- (b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:
- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
 - (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
 - (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
 - (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
 - (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.
- (c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:
- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.

- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

12. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 11 below).

13. **Termination and Partial Termination; Rights of Parties after Termination.**

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Cable Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Cable Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master

Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

14. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the

arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form

reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

16. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver on such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Property Access Agreement as of the date first written above.

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Coxcom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix

By: _____
J. Steven Rizley
General Manager and VP

Address: 2095 West Pinnacle Peak Road
Suite 110
Phoenix, AZ 85027
Phone: (623)322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Att: General Counsel

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Shea Sunbelt Pleasant Point, LLC, a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona
limited liability limited partnership,
its Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
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and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network: To Be Determined
- 2) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT C
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

- (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT D
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

LT-12

LAW OFFICES OF
STOREY & BURNHAM
P.C.

MEMORANDUM

To: Linda Trickey, Mary Kelley, and Tisha Arthurs
CC: Curt Smith
From: Lesa J Storey
Date: March 24, 2003
Re: Vistancia, (Commercial) Property Access Agreement and (Residential) Co-Marketing Agreement

Curt Smith requested that I forward to you the attached copies of the current versions of the following documents:

- 1) Communication Services Easements and Restrictions;
- 2) Appendix A Definitions and Interpretations;
- 3) Non-Exclusive License Agreement (relating to the non-exclusive license that would be granted to Cox pursuant to the above-referenced Property Access Agreement); and
- 4) Non-Exclusive License Agreement (relating to the non-exclusive license that would be granted to Cox pursuant to the above-referenced Co-Marketing Agreement).

Curt indicated that a concern had been raised by Cox regarding its obligations under the "most favored nations" provision that appears in Section 6(d) of the Property Access Agreement and Section 5(a)(iv) of the Co-Marketing Agreement. That provision is not intended to impose any material obligation on Cox; instead, it imposes obligations on the Master Developer (Shea Sunbelt Pleasant Point, LLC) and on the Access Entity (Vistancia Communications, L.L.C.), by requiring them not to enter into agreements with other communication service providers (i.e., providers other than Cox) on terms that are more favorable than those given to Cox. The only "obligation" of Cox under this provision is the acknowledgment in the last sentence (that the "most favored nations" provision is intended to create a level playing field, rather than to give Cox a competitive advantage). The acknowledgment in the last sentence is designed to bolster the enforceability of the "most favored nations" provision, were it ever to be challenged by a Cox competitor that is trying to gain access to the community to provide communications services.

Finally, Curt requested that I provide to you language for the "Turnover Date" definition in Section 1(cc) of the Co-Marketing Agreement, regarding a description of when the "Turnover Date" for Vistancia Maintenance Corporation will occur. Please see the language underlined below, which provides that description.

[[File Name]]

Page [PAGE]

C01962

- (cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration (which voting provisions, in general, provide that such voting control will terminate when such Declarant no longer owns any portion of the Covered Property (as defined in the Master Declaration) or owns or holds an option to purchase any interest in any portion of the Annexable Property (as defined in the Master Declaration), or upon such Declarant's earlier relinquishment of such voting control if it so elects in its sole and absolute discretion), and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

Please do not hesitate to contact me if you have questions or would like to discuss the foregoing.

Vistancia

Page 1 of 1

From: Lesa J. Storey [lstorey@sbplc.com]
Sent: Monday, March 24, 2003 11:53 AM
To: Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Cc: Curt Smith (csmith@sunbeltholdings.com)
Subject: Vistancia

Please see the attached Memorandum, and documents referenced in the Memorandum, which are being sent to you at the request of Curt Smith.

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

<<ESM_JM_4 CommonServicesEasementsandRestrictions(Vistancia) (03-24-03).doc>> <<EXH_JM_4
AppendixA-DefinitionsandInterpretations(Vistancia)(03-24-03).doc>> <<LIC_JM_4 Non-
ExclusiveLicenseAgreement(Vistancia)-Commercial (03-24-03).doc>> <<LIC_JM_4 Non-
ExclusiveLicenseAgreement(Vistancia)-Residential (03-24-03).doc>> <<MEMO_LJS_Cox (03-24-03).doc>>

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3/17/2005

C01964

LT-13

4-7-03

Kelley, Mary (CCI-Phoenix)
From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, March 27, 2003 3:31 PM
To: 'csmith@sunbelt holdings.com'
Cc: Drake, Paul (CCI-Phoenix); Trickey, Linda (CCI-Atlanta)
Subject: Final Redline Commercial Vislancia Agreement

Handwritten notes:
Sunbelt Holdings
CCI-Atlanta
in hand draft

Handwritten notes:
Document
previous - make sure
all changes are noted
and they are.

Curt:
Per our conference call on Monday, March 24th at 8:00am, I am sending the commercial access agreement with minimal changes made by Linda Trickey back to you. Please review at your earliest convenience. We would like to finalize all changes/additions as quickly as possible to meet the April 1st deadline. If you have any questions, please feel free to contact Paul, Linda or myself.

Thank You



Vislancia

Mary Kelley

Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

Shea Sunbelt Pleasant Point, LLC
&
COXCOM, INC.
PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 21401 North 29th Avenue, 2005 West Pinnacle Peak Road, Suite 110, Phoenix, AZ 85027, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- D. Whereas the Master Developer has subjected all or a portion of Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona as Instrument Number 2003-____ (the "CSER").
- E. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, the Access Entity and Cox agree as follows:

AGREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
internet files
- (j) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
UT K
OR 1
- (k) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.

- (j) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- (k) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, ~~revenue charges for internet connectivity, and fees and charges for providing equipment to any tenant, Owner or occupant of a Building, but~~ excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, ~~equipment~~, revenue from residential dwellings (such as apartments, condos, and single family homes), ~~revenue from governmental entities~~, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (l) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- (m) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (n) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (o) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (p) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (q) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any cabinet built by Master Developer or an Owner.
- (r) "Communication Services" shall mean Video Televisions Service, Internet access services and Telephone Service provided to or within Vistancia, ~~have the meaning set forth in Appendix A of the CSER, with respect to the Buildings within Vistancia.~~
- (s) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties, ~~Telephone Service (local) and Telephone Service (long distance).~~

(v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(w) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(x) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(y) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

(a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this Agreement by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
- (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer and Cox acknowledge and agree that the intent of this section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia. In the event that the provisions of this section 3 are not sufficient to accomplish this, Master Developer shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this section 3, including, without limitation, any necessary easements or rights of access between non-continuous Plats. In the event that Master Developer is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's obligations hereunder and/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by others, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

4. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings.

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- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection (a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection (b)) and Master Developer.

Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
- (i) **Video/Cable Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authorities, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products become commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
 - (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox.

provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.

- (i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.
- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) **Most-Favored-Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation which, in the aggregate, allows a lower payment than is provided for the Percentage Fee under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage Payment under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively the Most-Favored-Nation Rights).

Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section Most-Favored-Nation-Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

6. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) Required Owner Provision. Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plans processed by Master Developer in respect of Vistancia.
- (d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) Cox Trenching Obligations. Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to the following: ~~1) permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), and/or 2) permit such Owner, tenant or other occupant to advance the cost of construction and/or materials on behalf of Cox and thereafter offset the amounts so advanced against fees payable to Cox for Communication Services provided to the Building. If an Owner, tenant or other occupant chooses the first option (and such option is permitted under the terms of the CSER), therein which case the exclusive marketing provisions set forth herein shall not apply to the new Building.~~ Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 8) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable Percentage Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95 %	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Master Developer shall be paid the Applicable Percentage Fee, if any, corresponding to the decreased Penetration Percentage.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
- (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the

Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.
10. **Insurance; Indemnification; Waiver of Subrogation.**
- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
 - (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
 - (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
 - (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
 - (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
 - (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

11. **Representations and Warranties**

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under

this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
 - (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.
- (c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:
- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.
 - (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
 - (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
 - (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

12. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform; any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

(i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 11 below).

13. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

- (f) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide Video Cable Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
- (g) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Cable/Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.
- (b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
- (i) Termination Upon Default or Other Termination or Expiration. From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Planned Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Planned Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the

Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

- (c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:
- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims.

and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee

signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

- (c) Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide VideoCable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

16. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver on such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or

"subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Property Access Agreement as of the date first written above.

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Coscom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix

By: _____
J. Steven Ritzky
General Manager and VP

Address: 2040195 West Pinnacle Peak Road North
29th Avenue

Suite 440
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: General Counsel

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: Shea Sunbelt Pleasant Point, L.L.C., a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona
limited liability limited partnership,
its Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scotsdale Road
Suite 160
Scotsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scotsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project.
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches.
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network: To Be Determined
- 2) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital videable programming.
- 3) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT C
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT D
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

LT-14

From: Arthurs, Tisha (CCI-Phoenix)
Sent: 4/1/2003 12:09:25 PM (Eastern Time)
To: 'csmith@sunbeltholdings.com'; 'mhammons@sunbeltholdings.com'
CC: Drake, Paul (CCI-Phoenix); Kelley, Mary (CCI-Phoenix)
Attachments: Vistancia residential final redline.doc
Subject: FW: Vistancia

Curt,
Here are the residential revisions. There is an area highlighted in yellow only because we did not get it to "track changes". This is something that we would like added to the section 3b (iv). The other changes you can right click on and accept them or not.

Let me know if you have any questions.

Best regards,
Tisha Arthurs
Cox Communications
Sr. Account Executive
(623)322-7857

-----Original Message-----
From: Trickey, Linda (CCI-Atlanta)
Sent: Tuesday, April 01, 2003 10:40 AM
To: Arthurs, Tisha (CCI-Phoenix)
Subject: Vistancia

C02057

Shea Sneath Pleasant Point, LLC
R
COXCOM, INC.
CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT ("CMA") is entered into this ____ day of _____, 2003 between COXCOM, INC., a Delaware corporation &/or COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications 1, L.C., an Arizona limited liability company (hereinafter "Access Entity") and Shea Sneath Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria") in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-098671B and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development");
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development; Master Developer will pay Cox a non-refundable capital contribution of \$3,000,000.00 to defray said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer has subjected all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona in Instrument Number 2003-____ (the "CSER");
- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services;
- G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- I. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable considerations, the receipt and adoption of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows:

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling five percent (5%) or more of the voting securities or voting control of such Person; or (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmissions to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSFR) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
 - (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
 - (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.

- (g) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (h) "Cox" means CoxComm, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (i) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____ as amended from time to time.
- (j) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to including, but not limited to converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (k) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof, or to be recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (l) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (m) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistaire.
- (n) "Master Developer" means Shen Strubdt Pleasant Point, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (o) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (p) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-lot" or planned lots within the Development for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (q) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (r) "Home Owners Association" means each Village Association, and any other homeowners or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (s) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistaire to be recorded in the office of the Maricopa County Recorder as Instrument Number 2003-_____ as amended from time to time, which among other things, provide for the organization of Vistaire Maintenance Corporation.

- (iv) "Flat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Parris or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Parris or other political subdivision with jurisdiction over the Development or the applicable portion thereof, provided, however, that any Flat as described herein shall be subject to the CCR and the Non-Exclusive License.
- (v) "Plat(s) Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plat, together with the streets (whether public or private) designated on the Plat.
- (vi) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (vii) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (viii) "Technology Facilities" means all facilities, including without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistasia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wire, cable, pipes, sleeves, pods, cross connect panels, fiber TI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment power interlocks, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (ix) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (x) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established; (ii) as to Vistasia Maintenance Corporation, the date on which Master Developer's voting control of Vistasia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration; and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (xi) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a necessary obligation an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth tides, geologic or seismological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public disorder, civil

circumstances, acts or threats of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that would be performed before the action that is delayed.

(ec) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(gg) "Virtacia" means the SHUs and MFUs within the Development in Pooma, Arizona, as described in Recital A.

(hh) "Virtacia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

Formatted: Bullets and Numbering

(a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plan, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this CMA by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

(i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the

subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2113, §32-2195.01 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishments and delineations shall not create or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer and Cox acknowledge and agree that the intent of this section 3 and the Non-Exclusive License is to provide Cox with physically sustaining easements, licenses and access rights throughout VistaNova, which allow Cox to reach each SFR and MFU within VistaNova. In the event that the provisions of this section 3 are not sufficient to accomplish this, Master Developer shall grant or cause to be granted to Cox such additional personal, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this section 3, including, without limitation, any necessary easements or rights of access between non-adjacent Plats. In the event that Master Developer is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's obligations hereunder and/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewers, storm sewers, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Areas may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (c) Pre-Wire Specifications. Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 4(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provisions, then (i) Master Developer shall be permitted to delete such item (b)

from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

(d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).

(e) **Repair of Improvements.** Cox shall promptly repair and restore to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear, any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

4. **Communication Services & Technology Facilities Obligations of Cox.**

(a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communication Services (including future technologies comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only: (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistasia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistasia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistasia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a non-refundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00) to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003.

Deloitte, LLP

(b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 3(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistasia Maintenance Corporation or

common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. The compensation as set forth in Exhibit C (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

(c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, L.L.C. and provided further that Cox shall have access to buildings as necessary to provide the service.

(iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide (initial), repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the

Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.

- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities or in serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Petris or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Forums and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(c) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation drains and pre-wiring (per the Pre-Wiring Specifications attached as Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of the Development conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory constraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place.

Debit:

Debit: Amount of the foregoing 3 Month Prepayment shall grow by Cox the sum of Three Dollars and No. 10/100ths (\$3.00) per SFR and No. 10/100ths (\$3.00) per MFU in accordance with subsection 6(b) (proportionate to subsection 6(b)) in four equal installments of Seven Hundred Fifty Thousand and No. 00/100ths (\$750,000) each on the beginning of each quarter, commencing April 1, 2013, which shall constitute one of the installments of the Cox Technology Facilities for the initial phase of the Development (comprising of Village A and Village B).

at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Visitation and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Visitation Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Visitation Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

(m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:

(i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (with such model home is sold to an individual homebuyer) and to a television provided by Master Developer in the information center.

(ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet Demo to a computer provided by the Neighborhood Builder (with such model home is sold to an individual homebuyer) and to a computer provided by the Master Developer in the information center.

(iii) **Signage at Point of Delivery.** Appropriate recognition of the house provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox.** During the Term of this CMA:

(f) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia.

(g) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only: (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (g) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection (b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (g) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(h) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the instant home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial).

(i) **Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that:** (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA); or (b) provides for any marketing compensation which takes individually (as to an individual SFH or MHU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA); or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

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~~Deleted: Most Favored Nations Rights~~

(j) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G during the Term of this CMA, provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.

(d) Reporting by Neighborhood Builders. During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(e) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6 Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistaone during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

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(c) Cooperation in Use of Technology Easements and Similar Use Right Areas. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right

to utilize easements or similar easement areas established pursuant to Plans prepared by Master Developer in respect of Vistaquia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Transfer Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistaquia, to provide, installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistaquia that are sold by Master Developer for development of SFRs to Neighborhood Builders through easements that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builders fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistaquia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder using naming plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties to the performance of the development work to

be performed by each Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistacon.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MRUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MRU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

Insurance, Indemnification, Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computers or any other

technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

- (c) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or in incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or caused to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance except as noted with respect to subsections (b) and (c).

Representations and Warranties

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **The Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Visnacia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) By Cox, Cox hereby represents and warrants to Votacia as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) By Access Entity, Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.

(vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Venencia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

18. **Default and Remedies.**

(a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 18 with respect to the type of default that has occurred.

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the non-defaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer for Access Entity, as applicable shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 17.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 18.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

(i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 18, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Creation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service in Vista area or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vista area or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of

receipt of Master Developer's list of unresolved issues. Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to material default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to lease the rights of access to, each SFR and MFU provided by all Planned Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Planned Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License as by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration, but the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreements with another communication services provider, including granting of one or more non-exclusive license agreements) on terms that are the same as or different from the Non-Exclusive License provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communication Services.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Pavia or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Pavia or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistaquia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures or otherwise on property, owned by Master Developer Vistaquia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox.

(iv) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(v) Internet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interlaces with respect to "Vistaonline" and Master Developer shall remove all of its equipment used in the operation of "Vistaonline" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and in the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and are subsequently admissible in any further proceeding, except for the summaries of agreements prepared by the Mediator and actions lodged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, each other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all

experts and witnesses, provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

- (c) **Procedure.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules then in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (d) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

11. Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Visiowave, (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"), (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate, (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer, or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this CMA and in any easement, permit or other accessories of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"), (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate, (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate, (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Poria or other applicable governmental authority, or to any transferee of Cox's license for other legal authority of Cox) to provide Cable Television Services to customers in Poria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA.

arriving from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

1.4. Miscellaneous

- (a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the terms of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-home counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the non-prevailing party.
- (d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested by confirmed fax or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is returned as shown on the records or manifest of the U.S. Postal Service or such carrier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint venturer or employee.

- (b) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party in this CMA.
- (c) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (d) **Waiving Required.** No act delay or remission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereto, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (e) **Indemnification.** Each party in this CMA represents and warrants that it has not dealt with any real estate broker or agent in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (f) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (g) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (h) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders; singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Section" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entry or Lessor unless another meaning is required by the context. The word "person" includes individuals, entities and governmental subdivisions. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (i) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of their length and careful negotiation that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the

interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information consisting from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that it, or however, publicly knows through no wrongful act of such party, or that it rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends and intellectual property rights designations that appear in the original version. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records; unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Coe's customer rights on plats and steps of dedication, by labeling such documents as "D.U.R.S.S.E." plats in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Co-Marketing Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road,
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1119

and required copy to
8800 N. Guiney Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

SHEA SUNDELT PLEASANT POINT, LLC, a
Delaware limited liability company

By: Shea Howell Swadlow, Inc., an Arizona
corporation, its Member

By: _____
Its

By: Sundelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sundelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

By: Sundelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Cynthia E. Smith, its Chief
Operating Officer

"Cox"

Address: 20401 N. 27th Avenue
Phoenix, AZ 85719

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: _____
J. Steven Rieley
General Manager and VP

"Access Entry"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-4770
Facsimile: (480) 905-1419

and repaired copy to
1800 N. Gainey Center Drive
Suite 170
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS L.L.C., an
Arizona limited liability company

By: Shea Soubel Pleasant Point L.L.C. a Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its _____

By: Soubel Pleasant Point Investors L.L.C.,
an
Arizona limited liability company, its
Member

By: Soubel PP, L.L.P. an Arizona
limited
liability limited partnership, its
Manager

By: Soubel Holdings Management
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Provider ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendments(s) therein (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide and pay the cost of providing (i) access by Cox to all necessary utility distribution trunks within the Property, which trunks shall comply with the route and specifications provided by the AFS plans thereto, and (ii) the building serves from utility distribution trunks to each residence constructed by Buyer on the Property;
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provisions, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional FDC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) nodes in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench construction efforts with Viatorica and other expected utilities is essential to limit post-joint trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NB. NIDs will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Service: Meet or exceed industry standards for programming quantity and signal quality of analog and digital cable programming.
- 3) Telephone Service: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Service: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for intrusion. Data services shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions as Cox deems appropriate to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in VistaVie, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the VistaVie Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communications, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting VistaVie Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in VistaVie Community, wherein Cox will take every opportunity to promote the Master Developer, Builder, Cox Partnership, highlighting VistaVie.
- 5) Support of any Grand Opening activities highlighting the VistaVie Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials.
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for VistaVie that will reference VistaVie partnership with Cox.

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Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party.

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other appropriate times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each extra package and/or New Homeowners Welcome folders;
- (i) include Cox's name and a brief description of Cox's services in Cox digital logo in all applicable written, oral and electronic advertisements of Vistacon or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (j) when available promote use of the Cox High Speed Internet domain in the main Model Sales Offices of the Neighborhood Builders;
- (k) allow Cox to use technology displays in a model as a vehicle to demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Florida or other applicable governmental authority and excluding other telecommunications services providers) including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs or MFUs to:
 - (1) utilize the Technology domain as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox to Vistacon residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homeowners Information folders "only" Cox sales packages information and materials when referring to technology providers for Vistacon SFRs being developed and Communication Services expected to be a part thereof.

EXHIBIT C
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(7) provide notice of pending ex-row closings

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EXHIBIT D

Cable Television/Internet Access Services Pre-Wire Specifications
Viscacia Residential Pre-Wiring Guidelines

SFR and MFU INSIDE WIRING:

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 flooded foil, 60° braid, non-banded tape, flame retardant PVC jacket, Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be hard run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RG6 coaxial cable of in or quad shield construction, with the recommended RG6 connector.

MO-keeper crimp connectors must be used consistent with the manufacturer's recommendations for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, derive and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Texas or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities.
 - (b) Tariffs on file with the ACC.
 - (c) Bellcore (including TA-NWT-000909).
 - (d) National Cable Television Association, and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for intrusions. Reports on intrusions and other security issues will be provided to Master Developers. Data systems shall be compliant with all NCHS-DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Texas or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credits shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverage:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees received for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

LT-15

From: Lesa J. Storey [lstorey@sbpic.com]
Sent: Tuesday, May 27, 2003 10:21 PM
To: Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Arturs, Tisha (CCI-Phoenix)
Cc: Curt Smith (csmith@sunbeltholdings.com); Mark Hammons (mhammons@sunbeltholdings.com)
Subject: Vistancia; CSER
Attachments: ESM_JM_5 CSER.Final with Exhibits (05-27-03).pdf; DVComparison_ESM_JM_4 CommonServicesEasementsandRestrictions(Vistancia telecom) (03-24-03)-ESM_JM_5 CommonServicesEasementsandRestrictions(Vistancia telecom) (05-27-03).doc; DVComparison_EXH_JM_4 AppendixA-DefinitionsandInterpretations(Vistancia telecom)(03-24-03)-EXH_JM_5 AppendixA-DefinitionsandInterpretations(Vistancia telecom)(05-27-03).doc

Ladies,

Curt Smith requested that I forward to you the attached documents, consisting of the following:

- 1) Final version of the "CSER" document, with all Exhibits attached (note: the Exhibit A property initially being subjected to the CSER describes the parcels that make up Village A and Trilogy);
- 2) Redlined copy of the CSER document, showing changes to the last version that you reviewed (dated 3-24-03) (as you will see, all of the changes are of a "clean-up" variety); and
- 3) Redlined copy of Appendix A to the CSER, showing changes to the last version that you reviewed (dated 3-24-03) (again, all of the changes are of a "clean-up" variety).

We are delivering these documents to you because, under the terms of the Co-Marketing Agreement for Vistancia, Cox has the right to review and approve the CSER prior to recording it. We would like to record the CSER before the end of this week, so if you could get back to us with your approval (or comments, if any) before then, we would greatly appreciate it.

Thanks much,

Lesaj. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbpic.com

<<ESM_JM_5 CSER Final with Exhibits (05-27-03).pdf>> <<DVComparison_ESM_JM_4 CommonServicesEasementsandRestrictions(Vistancia telecom) (03-24-03)-ESM_JM_5 CommonServicesEasementsandRestrictions(Vistancia telecom) (05-27-03).doc>> <<DVComparison_EXH_JM_4 AppendixA-DefinitionsandInterpretations(Vistancia telecom)(03-24-03)-EXH_JM_5 AppendixA-DefinitionsandInterpretations(Vistancia telecom)(05-27-03).doc>>

3/17/2005

C02103

LT-16

FW: Vistancia; CSER

Page 1 of 1

From: Lesa J. Storey [lstorey@sbplc.com]
Sent: Tuesday, June 10, 2003 3:12 PM
To: Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Cc: Curt Smith (csmith@sunbeltholdings.com)
Subject: FW: Vistancia; CSER

[LINDA, MARY AND TISHA: I AM RE-SENDING THIS EMAIL. MY FIRST ATTEMPT WAS BOUNCED BACK WITH A MESSAGE INDICATING IT COULD NOT BE DELIVERED BECAUSE YOUR MAILBOXES WERE FULL. I HAVE THEREFORE DELETED THE FULL CLEAN COPY OF THE CSER FROM THIS MESSAGE, AND HAVE GIVEN YOU ONLY THE REDLINE (DUE TO A 78 PAGE SCANNED LEGAL DESCRIPTION, THE CLEAN COPY IS QUITE LARGE IN THE MEMORY IT CONSUMES, AND I'M SURE WAS THE REASON THE ORIGINAL ATTEMPT WAS BOUNCED BACK TO ME. IF THERE IS A PHYSICAL ADDRESS, OR ANOTHER EMAIL ADDRESS, WHERE YOU WOULD LIKE ME TO SEND THE CLEAN COPY, PLEASE LET ME KNOW. THANKS.]

-----Original Message-----

From: Lesa J. Storey
Sent: Tuesday, June 10, 2003 2:51 PM
To: Tom Eccles (teccles@sunbeltholdings.com); Linda Trickey (ltrickey@ccs.com); Mary Kelley (mkelley@ccs.com); Tisha Arthurs (tarthurs@ccs.com)

Cc: Curt Smith (csmith@sunbeltholdings.com); Mark Hammons (mhammons@sunbeltholdings.com); Julie King (jking@sunbeltholdings.com); Janet Gould (willfor@cybertrails.com)

Subject: Vistancia; CSER

We have made a few clean-up changes to the "final" version of the CSER previously forwarded to you. Attached is a clean copy of the CSER, containing the changes. The changes made to the prior draft consist of the following:

- 1) Changes reflected in the attached document entitled REDLINE (06-10-03); and
- 2) The addition of pages 43 through 78 of the Exhibit A legal description (thereby adding additional property to the land being initially subjected to the CSER).

Please do not hesitate to contact me should you have any questions.

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

<<REDLINE (06-10-03).pdf>>

file://D:\emails\FW%20Vistancia.htm_%20CSER.htm

3/18/2005

C02105

LT-17

From: Lesa J. Storey [lstorey@sbplc.com]
Sent: Friday, June 20, 2003 3:45 PM
To: Trickey, Linda (CCI-Atlanta); Arthurs, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix)
Cc: Curt Smith (csmith@sunbelholdings.com)
Subject: Vistancia; Telecommunications Agreements

Attached for your review are the following:

- 1) Redlined copy of the Non-Exclusive License to be recorded in connection with the CSER (relating to the commercial Property Access Agreement). This document reflects the new provisions required by the City (as well as a few clean-up changes);
- 2) Redlined copy of the Cox Non-Exclusive License to be recorded in connection with the CSER (relating to the residential Co-Marketing Agreement). This document reflects , reflecting the new provisions required by the City (as well as a few clean-up changes);
- 3) Initial draft First Amendment to the commercial Property Access Agreement, which reflects the modifications I believe Curt Smith has discussed with some (or all) of you; and
- 4) Initial draft First Amendment to the residential Co-Marketing Agreement, which reflects the modifications I believe Curt Smith has discussed with some (or all) of you.

Please give either Curt or me a call if you have questions.

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

<<DVComparison_LIC_JM_5 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial CLEAN (04-04-03)-LIC_JM_6 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial (06-18-03).doc>>
<<DVComparison_LIC_JM_5 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential CLEAN (04-04-03)-LIC_JM_6 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential (06-18-03).doc>> <<AMD_LJS_1 First Amend PAA (06-18-03).doc>> <<AMD_LJS_1 First Amend CMA (06-18-03).doc>>

file://D:\agreement\from%20Shea%20legal\Vistancia.htm_%20Telecommunications%20A... 3/17/2005

C02110

LT-18

From: Lesa J. Storey [lstorey@sbplc.com]
Sent: Friday, June 27, 2003 4:09 PM
To: Arthur, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix); Trickey, Linda (CCI-Atlanta)
Cc: Curt Smith (csmith@sunbeldholdings.com)
Subject: Vistancia; Revised Sub-License Agreements

Tisha, Mary and Linda,

Attached are redlined copies of the revised Non-Exclusive License Agreements relating to the commercial and residential agreements of Vistancia. As you will see, the only changes to the prior version were to clean up a couple of typos in the residential License, to insert the recording information for the CSER, and to include (in Section 4.03) an additional provision required by the City of Peoria. The MUEI referenced in Section 4 of the Agreement is scheduled for Peoria City Council approval on July 2, and we do not expect any further change to the attached documents as a result of the City's comments.

Lesla J. Storey
Storey & Burnham PLC
3100 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

<<LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial redline (06-27-03).doc>> <<LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential redline (06-27-03).doc>>

C02137

LT-19

From: Curt Smith [csmith@sunbeltholdings.com]
Sent: Friday, October 03, 2003 11:57 AM
To: Christie, Tisha (CCI-Phoenix)
Subject: FW: Revised Agreements

Attachments: DVComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc; DVComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc; DVComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial amd restated (09-25-03)1.doc; DVComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential amd restated (09-25-03).doc



DVComparison_LIC DVComparison_LIC DVComparison_AG DVComparison_AG
_JM_7 Non-Excl... _JM_8 Non-Excl... _1_cox_comm_5 V... _M_COX_6 Vistanc...

> -----Original Message-----
> From: Curt Smith
> Sent: Friday, October 03, 2003 7:29 AM
> To: Tisha Arthurs (E-mail); Mary Kelley (E-mail)
> Cc: Mark Hammons
> Subject: Revised Agreements
>
> Attached are revised copies of the Marketing and License Agreements for Vistancia. These move all financial payments from Cox to the License Agreements. Please review these and let me know if the changes are acceptable. We really need to get these done ASAP.
> Thanks for you help.
> > <<DVComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc>> > > <<DVComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc>> > > <<DVComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial amd restated (09-25-03)1.doc>> > > <<DVComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential amd restated (09-25-03).doc>>

C02170

WHEN RECORDED RETURN TO:

Shea-Sunbelt-Pleasant-Point, LLC
Vistancia Communications, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2003

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona
limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

Section 1.01 WHEREAS, Licensor is the "Grantor" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Property Access Agreement dated April 8, as of September 25, 2003, executed by Licensor, Shea-Sunbelt-Pleasant-Point/Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "PAA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July

23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and PAA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article IVV below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are by this License acknowledged, the Parties to this License agree as follows:

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the PAA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Video Television Services (as hereinafter defined), Internet Access Services (as hereinafter defined), and Telephone Service (as hereinafter defined) to Buildings (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Video Television Services, Internet Access Services, and Telephone Services or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the PAA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the PAA, then the terms and conditions of the CSER (or the PAA, as applicable) shall control and be binding upon Licensor, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as "Cox High Speed Internet". As used herein, the term "Video Television Services" shall mean the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services. As used herein, the term "Telephone Service" shall mean local and long distance telephone service provided by Licensee through one or more affiliates or third parties. As used herein, the term "Building" shall mean a building or other structure within the Development that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within the Development is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the PAA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the PAA. Any Transfer to a Person that is not authorized under Section 13(c) of the PAA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the PAA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the PAA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the PAA and shall also be null and void and of no force or effect.

Section 2.04 Use of Easement. This License shall be for the private, personal, exclusive and perpetual use and benefit of Licensee and its grantees, licensees, lessees, franchisees, successors and permitted assigns who have been identified by and contracted with the Licensee to own, install, repair, relocate, expand, or otherwise service the Facilities in the Service Easement Area.

Section 2.05 Title and Authority. Licensor represents, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantor" under the CSER, (b) Licensor has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, and (c) the individual executing this License on behalf of the Licensor has the authority to so execute the License.

Section 2.06 Chain of Title. This License is conveyed to the Licensee, its grantees, successors and permitted assigns, to have and to hold, so long as the rights, privileges and interests (licenses and easements) herein granted shall be used for the express purposes and upon the terms and conditions specified herein, but shall be subject to all liens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor and Licensee hereby covenant and agree that the License granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and permitted assigns of each of the respective Parties hereto.

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

Section 3.01 License Fee. In consideration of the license granted hereunder, Licensee agrees to pay to Licensor a fee (the "License Fee") calculated in accordance with Schedule 3.01 attached hereto, which License Fee shall be payable in accordance with the terms of said Schedule 3.01.

Section 3.02 Service Standards. All Video Television Services, Internet Access Services, and Telephone Services provided by Licensee in Buildings within the Development shall be of the quality required under the PAA.

ARTICLE IV - ARTICLE III—INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Section 3.04 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this License or the enforcement of the rights of Licensee under this

Licensee; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Section 3.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - ARTICLE IV—AGREEMENTS BENEFITING THE CITY

Section 5.01 Section 4.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4-01 5.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Section 4.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEL, to convert the MUEs (as such term is defined in the MUEL) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEL. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4-02 5.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Section 4.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and required as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4-03 5.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - ARTICLE V—NOTICES

Section 6.01 Section 5.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United States mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service.

Section 6.02 Section 5.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5-01 6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 5-01 6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United States mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5-01 6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 Section 5.03 Delivery Information. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 ~~Section 5.04~~ **Change of Address.** Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: ~~Shea-Sunbelt Pleasant Point~~**Vistancia, L.L.C.**, a Delaware limited liability company, its Manager

By: **Shea Homes Southwest, Inc.**, an Arizona corporation, its Member

By: _____
Its: _____

By: **Sunbelt Pleasant Point Investors, L.L.C.**, an Arizona limited liability company, its Member

By: **Sunbelt PP, L.L.P.**, an Arizona limited liability limited partnership, its Manager

By: **Sunbelt Holdings Management, Inc.**, an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

Schedule: 1.01 Other Easements or Licenses
 3.01 License Fees

LICENSEE

COXCOM, INC., a Delaware corporation d/b/a **COX COMMUNICATIONS PHOENIX**

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, L.L.P., an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

SCHEDULE 1.01

Other Easements or Licenses

Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003.

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sumbell Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions, and Restrictions for Vistancia, recorded on July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona.

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat of Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat of Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded 2003 as 2003 of official records of Maricopa County, Arizona.

List other plat(s), if any, that have been recorded as of date of recordation of Non-Exclusive License(s)

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor a License Fee according to the following scale based on the Applicable License Fee percentage (determined pursuant to the chart below according to the Penetration Percentage (as hereinafter defined) within each Building) multiplied by the Monthly Recurring Revenue (as hereinafter defined) for that Building. The License Fee shall be calculated (and paid by Licensee, if owed pursuant to the provisions of this Schedule 3.01) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Licensor would receive a License Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable License Fee</u>
85% - 94%	3% of MRC
75% - 85%	4% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher License Fee under the above chart, then Licensor shall be entitled to the higher License Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Licensor shall be paid the Applicable License Fee, if any, corresponding to the decreased Penetration Percentage.

As used herein, the term "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Licensee (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Licensee Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundle discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

In addition to the exclusion from MRC set forth above, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of License Fee payments due to Licensor hereunder.

The parties acknowledge that Licensee may be required by federal or state law, in lease or allow use of, portions of the Licensee Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Licensee from such third party providers be deemed MRC or subject to payment of License Fees hereunder. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Licensee Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Licensee Technology Facilities or a delegation or assignment of Licensee's rights.

All payments of the License Fees shall be payable to Licensee without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Licensee may designate. Payments of License Fees shall be made during the Term of the License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the PAA.

WHEN RECORDED RETURN TO:

Shea-Sumbelt-Pleasant-Point, LLC
Vistancia Communications, L.L.C.
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253-4424
Attention: Curtis E. Smith

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2003

"Licensor":
Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona
limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

Section 1.01 WHEREAS, Licensor is the "Grantee" under the CSER, and has not encumbered, alienated or otherwise transferred or diminished its rights thereunder, except as set forth on Schedule 1.01 attached hereto.

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Co-Marketing Agreement dated April 8, as of September 25, 2003, executed by Licensor, Shea Sumbelt-Pleasant-Point Vistancia, L.L.C., a Delaware limited liability company ("Master Developer"), and Licensee (the "CMA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and CMA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License franchising, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided; and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article IV below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are by this License acknowledged, the Parties to this License agree as follows:

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the CMA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Cable Television Services, Internet Access Services (as hereinafter defined), Telephone Services (local) and Telephone Services (long distance) to SFRs (as hereinafter defined) and MFUs (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the CMA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the CMA, then the terms and conditions of the CSER (or the CMA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as Cox High Speed Internet. As used herein, the term "SFR" shall mean a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse; and, the term "MFU" shall mean residential buildings within the Development containing multiple family-dwelling units for purchase, lease or rent whether detached or attached.

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the CMA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the CMA. Any Transfer to a Person that is not authorized under Section 13(c) of the CMA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the CMA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the CMA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the CMA and shall also be null and void and of no force or effect.

Section 2.04 Use of Easement. This License shall be for the private, personal, exclusive and perpetual use and benefit of Licensee and its grantees, licensees, lessees, franchisees, successors and permitted assigns who have been identified by and contracted with the Licensee to own, install, repair, relocate, expand, or otherwise service the Facilities in the Service Easement Area.

Section 2.05 Title and Authority. Licensor represents, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantee" under the CSER, (b) Licensor has not transferred, encumbered or otherwise diminished its rights under the CSER, except as set forth on Schedule 1.01, and (c) the individual executing this License on behalf of the Licensor has the authority to so execute this License.

Section 2.06 Chain of Title. This License is conveyed to the Licensor, its grantees, successors and permitted assigns, to have and to hold, so long as the rights, privileges and interests (licenses and easements) herein granted shall be used for the express purposes and upon the terms and conditions specified herein, but shall be subject to all liens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor and Licensee hereby covenant and agree that the License granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and permitted assigns of each of the respective Parties hereto.

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

Section 3.01 License Fee. In consideration of the license granted hereunder, Licensee agrees to pay to Licensor a fee (the "License Fee") calculated in accordance with Schedule 3.01 attached hereto, which License Fee shall be payable in accordance with the terms of said Schedule 3.01.

Section 3.02 Service Standards. All Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) provided by Licensee within the Development shall be of the quality required under the CMA.

ARTICLE IV - ARTICLE III—INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Section 3.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this License or the enforcement of the rights of Licensee under this License; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Section 3.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor

grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - ARTICLE IV - AGREEMENTS BENEFITING THE CITY

Section 5.01 Section 4.01-Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.015.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Section 4.02-Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEI, to convert the MUEs (as such term is defined in the MUEI) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEI. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.025.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Section 4.03-Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.035.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - ARTICLE V - NOTICES

Section 6.01 Section 5.01-Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United States mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service.

Section 6.02 Section 5.02-Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5.01-6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 5.01-6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United States mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5.01-6.01, above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 Section 5.03-Delivery Information. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 Section 5.04-Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this License as of the date first above written.

LICENSOR

VISTANCIA COMMUNICATIONS, L.L.C., an
Arizona limited liability company

By: ~~Shea-Sunbelt-Pleasant-Point~~Vistancia, L.L.C., a
Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its
Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

LICENSEE

COXCOM, INC., a Delaware corporation d/b/a/ COX
COMMUNICATIONS PHOENIX

By: _____
Its: _____

~~Schedule Schedules:~~ 1.01 Other Easements or Licenses
1.01 License Fees

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____
2003, by _____, the _____ of COXC&O, INC., a Delaware
corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____
2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the
General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant
Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea-Sunbelt-Pleasant-Point Vistancia, L.L.C., a
Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability
company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____
2003, by _____, the _____ of Shea Homes Southwest, Inc., an
Arizona corporation, a Member in Shea-Sunbelt-Pleasant-Point Vistancia, L.L.C., a Delaware limited liability company, the
Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

SCHEDULE 1.01

Other Easements or Licenses

Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003.

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sumbich Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricopa County, Arizona.

Declaration of Covenants, Conditions, and Restrictions for Vistancia, recorded on July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona.

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat of Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat of Vistancia Village A Parcel A10, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded 2003 as 2003- of official records of Maricopa County, Arizona.

List other plat(s), if any, that have been recorded as of date of recordation of Non-Exclusive License.

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MEU within the Village A portion of the Development is connected to any Communication Service provided by Licensor.

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MEU within the Trilogy portion of the Development is connected to any Communication Service provided by Licensor.

Licensee shall pay Licensor a percent of revenue, according to the following scale, received by Licensee as hereinafter provided. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate shall be calculated by dividing active customers by total homes (i.e., total SFRs and MEUs) passed. Penetration shall be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

<u>Penetration</u>	<u>Payment</u>
<u>75%-79%</u>	<u>15%</u>
<u>80%-85%</u>	<u>16%</u>
<u>86%-90%</u>	<u>17%</u>
<u>90%-95%</u>	<u>18%</u>
<u>95%-100%</u>	<u>20%</u>

The License Fee shall be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for payment of the License Fee.

All payments of the License Fees hereunder shall be payable to Licensor without demand at the address set forth in this License, or to such other address as Licensor may designate. Payments of License Fees shall be made during the Term of this License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the CMA.

- (q) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (r) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (s) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (t) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (u) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (v) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (w) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (x) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (y) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

- (2) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (2a) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 19 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) Development Process. As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Planned Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly ~~(and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital D) concurrently with their execution of this Agreement.~~ The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate Planned Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any

necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.

- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

i. **Communication Services & Technology Facilities Obligations of Cox.**

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners,

tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.

- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (f) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant

or other occupant has not, at its own expense; (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are

generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

- (b) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) **Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation or license fees which, in the aggregate, allows a lower payment than is provided for the Percentage-Fee under this Agreement as set forth in Section 8 in Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage-Payment under this Schedule 3.01 of the Non-Exclusive License Agreement as set forth in Section 2 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision hereof, this Section 5(d) shall terminate and be of no further force or effect (and no party to this Agreement shall have any further rights, liabilities or obligations under this Section 5(d) upon (i) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (ii) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the M.U.E.**

6. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) Required Owner Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) Cox Trenching Obligations. Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- (a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a

timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (ii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the

2. **10-Insurance; Indemnification; Waiver of Subrogation.**

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully change or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

2. **11-Representations and Warranties**

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
 - (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.

- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
 - (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
 - (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
 - (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.
- (b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:
- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
 - (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
 - (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
 - (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

(vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **12-Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 10(a) above and Section 11 below).

11. 13-Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.

(3) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as

is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. 44-Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the

mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. 15-Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistaocia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

- (c) Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

14. 16-Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the

received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

- (k) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint ventures or employee.
- (l) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (m) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (n) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (o) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (p) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (q) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (r) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "governmental" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any

governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arduous length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "DM U.S.S.E.F." (Multi-Use Easement) areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Property Access Agreement as of the date first written above.

~~SHEA-SUNBELT-PLEASANT-POINT-VISTANCIA~~
LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

By: ~~Shea-Sunbelt-Pleasant-Point-Vistancia~~ LLC, a Delaware limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

Coxcom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix

By: _____
J. Steven Rizley
General Manager and VP

Address: 20401 North 29th Avenue

Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: General Counsel

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its
Member

By: Sunbelt PP, LLLP, an Arizona
limited liability limited partnership,
its Manager

By: Sunbelt Holdings Management,
Inc., an Arizona corporation, its
General Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Lender Consent:
The undersigned hereby consents to the foregoing Amended and Restated Property Access Agreement, as
required by the terms of that certain Assignment of Common Services, Easements and Restrictions executed
by Visancia Communications, L.L.C., an Arizona limited liability company and Residential Funding
Corporation, a Delaware corporation, dated June 27, 2003.
RESIDENTIAL FUNDING CORPORATION, a Delaware
corporation

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Amended and Restated Property Access Agreement dated 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) **Network:** To Be Determined
- 2) **Video Services:** Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 3) **Voice Services:** Voice services shall be offered in compliance with the ACC Standards of Service, and the CLECT Tariff, with the State of Arizona.
- 4) **Data Services:** Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) **Bandwidth:** The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT C
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

- (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT D
Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. **Comprehensive Liability.** Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. **Workers Compensation.** Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. **Automobile Liability.** Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. **General Provisions.** Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

Sheo-Sunbelt-Pleasant-Point/Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED CO-MARKETING AGREEMENT

This AMENDED AND RESTATED CO-MARKETING AGREEMENT ("CMA") is entered into this 25th day of September, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Sheo-Sunbelt-Pleasant-Point/Vistancia, LLC, a Delaware limited liability company; (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Co-Marketing Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original CMA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original CMA, all in accordance with and as hereinafter provided in this CMA.
- C. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- BD. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a nonrefundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$1,125,000.00.
- GE. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- DE. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built, and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.
- EG. Whereas the Master Developer intends to subject all or has subjected a portion of the Development (and intends to subject further portions of the Development in the future) to certain easement and access

restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder on dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837186, official records of Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this CMA is being executed by the parties prior to recordation of the CSER, this CMA shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.

- FH** Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- GI** Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- HJ** Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- HK** Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows: and the Original CMA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superseded in its entirety by this CMA:

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined

in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

- (f) "CMA" means collectively this Amended and Restated Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
- (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
- (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (l) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder ~~for dated June 18, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital E of this CMA)~~ Arizona, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converters or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as "Cox High Speed Internet".
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea-Sunbelt-Pleasant-Point Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "MUEI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.

- (u) (s)-"Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or planned lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (u) (t)-"Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (y) (u)-"Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (v) (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia ~~to be recorded in the office of the dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County-Recorder, Arizona,~~ as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (w) (w)-"Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Developments and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Pecos or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Pecos or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (x) (x)-"Planned Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement areas designated as "M.U.-&S.S.E." or "Multi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (y) (y)-"Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (z) (z)-"SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (aa) (aa)-"Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/TI interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.

(cc) (bb)-"Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.

(dd)(cc)-"Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

(ee) (dd)-"Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ff) (ee)-"Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(gg) (ff)-"Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(hh) (gg)-"Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(i) (hh)-"Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

1. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in ~~Resist E~~ concurrently with their execution of this CMA. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
 - (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
 - (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
 - (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to

provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.

(v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.

(c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

(d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

I. **Communication Services & Technology Facilities Obligations of Cox.**

(a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each

Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$1,125,000.00.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. ~~The compensation as set forth in Exhibit C (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.~~
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology

services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) Telephone Service. Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.

(iv) Internet Access Service. Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.

(e) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(f) Selection of Contractors. Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
- (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center.
 - (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is

sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;

- (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

Exclusive Marketing Rights and Marketing Incentive License Fees.

(a) Exclusive Rights of Cox. During the Term of this CMA:

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services in Vistancia;
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;
- (iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation or license fees which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any

~~marketing compensation or license fees which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision of hereof, this Section 5(a)(iv) shall terminate and be of no further force or effect (and no party to this CMA shall have any further rights, liabilities or obligations under this Section 5(a)(iv)) upon (a) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (b) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the MUEE.~~

(b) ~~Cox Marketing and Promotion Effort.~~ Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) ~~Marketing Compensation.~~ Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit C, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.

(d) ~~Reporting by Neighborhood Builders.~~ During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(e) ~~Master Developer Audit Rights.~~ Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting

and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

- (b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the AFS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.
7. **Technology Facilities Cooperation & Coordination by Cox.**
- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this

CMA, (i) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (ii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no

knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) By Cox. Cox hereby represents and warrants to Vistancia as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) By Access Entity. Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.

- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party

from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 10(a) above and Section 11 below).

13. **Termination and Partial Termination; Rights of Parties after Termination.**

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise

fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.
- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

(c) License Fees under the Non-Exclusive License. The Non-Exclusive License provides for the payment of a License Fee by Cox to the Access Entity. The License Fee shall be payable by Cox to the Access Entity during the Term of this CMA, provided no License Fee shall be payable after termination of the CMA with respect to any Communication Service that is the subject of such termination, except for License Fees accrued in respect of such Communication Service(s).

but unpaid as of the date of such termination. So long as the Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay the License Fee to the Access Entity. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) does not terminate this CMA (and continues to perform under this CMA), Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

(d) (e)-Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

- (i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
- (iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancians" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with the Agreement and the parties are unable to resolve through informal discussions or negotiations, the parties agree to submit such dispute, controversy or claim to mediation or arbitration in accordance with the following procedures:

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on

behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from

and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

- (c) Cox. Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous.

- (a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

- (e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractors, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is

required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.M.U.&S.S.F." areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Co-Marketing Agreement as of the date first written above.

"Master Developer"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

~~SHEA SUNBELT PLEASANT POINT~~ VISTANCIA
LLC, a Delaware limited liability company

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

By: Sunbelt PP, LLLP, an Arizona limited
liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General
Partner

By: _____
Curtis E. Smith, its Chief
Operating Officer

"Coa"

Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix

By: _____
J. Steven Rizley
General Manager and VP

"Access Entity"

Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

VISTANCIA COMMUNICATIONS, L.L.C., as
Arizona limited liability company

By: ~~Shea Sunbelt Pleasant Point~~ Vistancia, LLC, a
Delaware
limited liability company, its Manager

By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: _____
Its: _____

By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its

Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: _____
Curtis E. Smith, its Chief Operating Officer

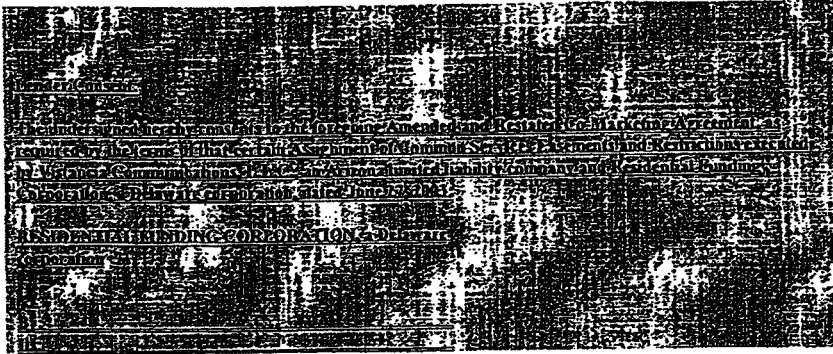


EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Amended and Restated Co-Marketing Agreement dated September 25, 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) In all of their media and print materials that are specific to Vistancia (i.e. "stand alone" media and print materials relating only to Vistancia that do not include any other communities or projects), Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the AFS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT A
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EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) **Network:**
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) **Cable Television Services:** Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) **Telephone Services:** Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) **Internet Access Services:** Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) **Bandwidth:** The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) **Service Bandwidth Guarantee:** In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

EXHIBIT C

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- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT D

**Cable Television/Internet Access Services Pre-Wire Specifications
Vistancia Residential Pre-Wiring Guidelines**

SER and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC Article 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be home run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75% - 79%	15%
80% - 85%	16%

86% - 90%	17%
90% - 95%	18%
96% - 100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

EXHIBIT F
Page 2

C02252



LT-20

From: Trickey, Linda (CCI-Atlanta)
Sent: Wednesday, October 01, 2003 10:37 AM
To: Lesa J. Storey
Subject: RE: Vistancia

Lesla,

I am going to have to call you tomorrow or Friday. I have to travel to Missouri today to assist my sister who is going through her first round of chemo. Are there any times on Thursday or Friday that you know will not work for you?

Also, I had not heard about the rearranging. What is the reason for it? Thanks.

Linda

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Monday, September 29, 2003 3:47 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

That time would work for me--I'll assume you will call me (my direct line is 602-522-0202). Also, have you heard from Curt Smith within the last week or so regarding the rearranging he wants to do (essentially putting the provisions regarding Cox payment of fees in the Non-Exclusive License being granted under the CSER, rather than having those provisions appear in the Co-Marketing Agreement and Property Access Agreement)? If Curt hasn't contacted you about that yet, I can walk you through it when we speak on Wednesday.

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Friday, September 26, 2003 12:15 PM
To: lstorey@sbplc.com
Subject: Vistancia

Lesla,

I think we are close to executing the additional documents for Vistancia, but I wanted to spend some time with you to make sure I have a comfort level as to where we are. Do you have some availability next week, specifically Wednesday, to go over the CSER, etc.? My preference is 12:00 noon ET, which I believe is 9:00 a.m. your time.

I look forward to hearing from you. Thanks.

Regards,

1

C02168

Linda Trickey
Corporate Counsel
Cox Communications

LT-21

Hayes, Yvonne (CCI-Atlanta)

From: Trickey, Linda (CCI-Atlanta)
Sent: Monday, October 06, 2003 11:36 AM
To: 'Lesa J. Storey'
Subject: RE: Vistancia

I have marked you on my calendar for 1:00 pm. ET and 10:00 your time.

Regards,

Linda Trickey

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Monday, October 06, 2003 11:28 AM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

Today is pretty crazy. Any time before 1:30 pm (Phoenix time) on Wednesday is available.

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
To: Lesa J. Storey
Sent: 10/6/03 6:49 AM
Subject: RE: Vistancia [mx]

Lesa,

Sorry we did not speak last week. It was more difficult to find the time. Are you available today or Wednesday?

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Wednesday, October 01, 2003 12:06 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

Thursday from 10:30 am to 2:00 pm would not work; any other time is fine.

The rearranging was suggested by litigation counsel hired by Shea Sunbelt, and has to do with positioning our agreements and the CSER in the best possible structure to withstand potential litigation by Accipiter (the small phone company that serves part of the project, who has been threatening) and/or Qwest. I can explain more when we talk. Best of luck to you and your sister.

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Wednesday, October 01, 2003 7:37 AM
To: Lesa J. Storey
Subject: RE: Vistancia

Lesa,

I am going to have to call you tomorrow or Friday. I have to travel to Missouri today to assist my sister who is going through her first round of chemo. Are there any times on Thursday or Friday that you know will not work for you?

Also, I had not heard about the rearranging. What is the reason for it?
Thanks.

Linda

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Monday, September 29, 2003 3:47 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

That time would work for me--I'll assume you will call me (my direct line is 602-522-0202). Also, have you heard from Curt Smith within the last week or so regarding the rearranging he wants to do (essentially putting the provisions regarding Cox payment of fees in the Non-Exclusive License being granted under the CSER, rather than having those provisions appear in the Co-Marketing Agreement and Property Access Agreement)? If Curt hasn't contacted you about that yet, I can walk you through it when we speak on Wednesday.

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Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Friday, September 26, 2003 12:15 PM
To: lstorey@sbplc.com
Subject: Vistancia

Lesla,

I think we are close to executing the additional documents for Vistancia, but I wanted to spend some time with you to make sure I have a comfort level as to where we are. Do you have some availability next week, specifically Wednesday, to go over the CSER, etc. ? My preference is 12:00 noon ET, which I believe is 9:00 a.m. your time.

I look forward to hearing from you. Thanks.

Regards,

Linda Trickey
Corporate Counsel
Cox Communications

LT-22

Hayes, Yvonne (CCI-Atlanta)

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, October 09, 2003 5:01 PM
To: Lesa J. Storey
Subject: RE: Vistancia

You do have my correct phone number. We had a problem with our network. I'll look into the other issue.

Linda

-----Original Message-----
From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Thursday, October 09, 2003 1:50 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

Linda,

My client is checking into the payment amount, and I'll let you know what they say. I also wanted to bring another item to your attention: Curt Smith informed me yesterday that Cox had withdrawn its authorization (or is not willing to provide authorization) for Mike Patten to represent the Vistancia developer in litigation against Accipiter regarding the enforceability of the CSER/MUE structure at Vistancia that we discussed in our conversation yesterday. Apparently, Mike had initially been retained to advise regarding the general enforceability of the structure under Arizona and federal law, and Cox had consented to that representation. My client then asked that Mike become more heavily involved in preparing/posturing the matter for potential litigation with Accipiter, and Cox balked at letting him get involved to that extent. Unfortunately, Curt Smith did not have the name of the Corporate Counsel at Cox who was involved in that decision (I'm sure Mike would know). So, my client is now in the process of searching for alternate Arizona counsel (and for the reasons we discussed yesterday, is having difficulty in that regard). I don't know if there is anything that can be done at this point to change Cox's mind, but thought that, at a minimum, you would want to know what has transpired. Also--I apparently took down your number incorrectly yesterday: I had (404) 269-7496, but I don't believe that is correct (based on my attempt to reach you via phone this morning).

Best regards,

Lesa

-----Original Message-----
From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Wednesday, October 08, 2003 11:23 AM
To: Lesa J. Storey
Subject: RE: Vistancia [mx]

Lesa,

You may want to double-check the dollar amounts that Developer has already paid Cox. I think the \$1,125,000 is incorrect, considering there should have been three payments of \$750,000 each. Thanks.

Linda

-----Original Message-----
From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Monday, September 29, 2003 3:47 PM

1

C02253

To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

That time would work for me--I'll assume you will call me (my direct line is 602-522-0202). Also, have you heard from Curt Smith within the last week or so regarding the rearranging he wants to do (essentially putting the provisions regarding Cox payment of fees in the Non-Exclusive License being granted under the CSER, rather than having those provisions appear in the Co-Marketing Agreement and Property Access Agreement)? If Curt hasn't contacted you about that yet, I can walk you through it when we speak on Wednesday.

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Phoenix, AZ 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Friday, September 26, 2003 12:15 PM
To: lstorey@sbplc.com
Subject: Vistancia

Lesa,

I think we are close to executing the additional documents for Vistancia, but I wanted to spend some time with you to make sure I have a comfort level as to where we are. Do you have some availability next week, specifically Wednesday, to go over the CSER, etc. ? My preference is 12:00 noon ET, which I believe is 9:00 a.m. your time.

I look forward to hearing from you. Thanks.

Regards,

Linda Trickey
Corporate Counsel
Cox Communications

C02254



LT-23

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, October 09, 2003 6:15 PM
To: Lesa J. Storey
Subject: RE: Vistancia

It was not one of our corporate counsel, so I am asking around. If necessary I will call Mike myself.

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Thursday, October 09, 2003 1:50 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

Linda,

My client is checking into the payment amount, and I'll let you know what they say. I also wanted to bring another item to your attention: Curt Smith informed me yesterday that Cox had withdrawn its authorization (or is not willing to provide authorization) for Mike Patten to represent the Vistancia developer in litigation against Accipiter regarding the enforceability of the CSER/HUE structure at Vistancia that we discussed in our conversation yesterday. Apparently, Mike had initially been retained to advise regarding the general enforceability of the structure under Arizona and federal law, and Cox had consented to that representation. My client then asked that Mike become more heavily involved in preparing/posturing the matter for potential litigation with Accipiter, and Cox balked at letting him get involved to that extent. Unfortunately, Curt Smith did not have the name of the Corporate Counsel at Cox who was involved in that decision (I'm sure Mike would know). So, my client is now in the process of searching for alternate Arizona counsel (and for the reasons we discussed yesterday, is having difficulty in that regard). I don't know if there is anything that can be done at this point to change Cox's mind, but thought that, at a minimum, you would want to know what has transpired. Also--I apparently took down your number incorrectly yesterday: I had (404) 269-7496, but I don't believe that is correct (based on my attempt to reach you via phone this morning).

Best regards,

Lesa

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Wednesday, October 08, 2003 11:23 AM
To: Lesa J. Storey
Subject: RE: Vistancia [mx]

Lesa,

You may want to double-check the dollar amounts that Developer has already paid Cox. I think the \$1,125,000 is incorrect, considering there should have been three payments of \$750,000 each. Thanks.

Linda

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Monday, September 29, 2003 3:47 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Vistancia

C02255

That time would work for me--I'll assume you will call me (my direct line is 602-522-0202). Also, have you heard from Curt Smith within the last week or so regarding the rearranging he wants to do (essentially putting the provisions regarding Cox payment of fees in the Non-Exclusive License being granted under the CSER, rather than having those provisions appear in the Co-Marketing Agreement and Property Access Agreement)? If Curt hasn't contacted you about that yet, I can walk you through it when we speak on Wednesday.

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Fax Line: (602) 468-1335
email: lstorey@sbplc.com

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta) [mailto:Linda.Trickey@cox.com]
Sent: Friday, September 26, 2003 12:15 PM
To: lstorey@sbplc.com
Subject: Vistancia

Lesa,

I think we are close to executing the additional documents for Vistancia, but I wanted to spend some time with you to make sure I have a comfort level as to where we are. Do you have some availability next week, specifically Wednesday, to go over the CSER, etc.? My preference is 12:00 noon ET, which I believe is 9:00 a.m. your time.

I look forward to hearing from you. Thanks.

Regards,

Linda Trickey
Corporate Counsel
Cox Communications



LT-24

Hayes, Yvonne (CCI-Atlanta)

From: Trickey, Linda (CCI-Atlanta)
Sent: Friday, October 10, 2003 3:54 PM
To: Lesa J. Storey
Subject: RE: Cox Agreements

Les,

I am almost finished with the review, but due to an unforeseen contract, won't finish until next week. Did you already send me Mike Patten's phone number? If so I will try and give him a call to find out what is going on.

Regards,

Linda Trickey

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Friday, October 10, 2003 11:21 AM
To: Trickey, Linda (CCI-Atlanta)
Subject: FW: Cox Agreements

Linda, a total of \$2,250,000 has been paid to date under the Vistancia Co-Marketing Agreement (so that error in the current draft will need to be corrected).

Les

-----Original Message-----

From: Cindy Voelz
To: Mark Hammons
Cc: Lesa Storey (E-mail)
Sent: 10/10/03 8:09 AM
Subject: RE: Cox Agreements [mx]

Mark,

Here is the information that you requested:

1st payment (due 4/1/03):	Check #1224	3/25/03
\$750,000		
2nd payment (due 7/1/03):	Check #1779	6/25/03
\$750,000		
3rd payment (due 10/1/03):	Check #2142	9/25/03
\$750,000		

This leaves one remaining payment due on 1/1/04.

Thanks
Cindy Voelz
Vistancia, LLC
Project Controller

-----Original Message-----

From: Mark Hammons
Sent: Thursday, October 09, 2003 6:28 PM
To: Cindy Voelz
Subject: FW: Cox Agreements

Could you please look into this

Thanks

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Thursday, October 09, 2003 5:28 PM

To: Mark Hammons

Subject: Cox Agreements

Could you tell me how much has been paid to Cox to date, in connection with the \$3,000,000 total capital advance to be paid by Vistancia, LLC per the Co-Marketing Agreement? Per the terms of the Agreement, this was to be paid in four quarterly installments of \$750,000 each, which were due at the beginning of each quarter commencing April 1, 2003. (That would mean that a total of \$2,250,000 should have been paid to date).

When I confirmed the number with Sunbelt's accounting department (at the end of September), I was told that \$1,125,000 had been paid. That number doesn't match up to the \$750k installments, which makes me (and Cox's in-house attorney) think something is off. So, please let me know the correct number.

Thanks,

Lesa J. Storey

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3030 E. Camelback Road
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Phoenix, AZ 85016

Main Line: (602) 468-0111

Direct Line: (602) 522-0202

Fax Line: (602) 468-1335

email: lstorey@sbplc.com

Hayes, Yvonne (CCI-Atlanta)

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, October 16, 2003 11:50 AM
To: 'Lesa J. Storey'
Subject: RE: Cox Agreements

I left a message for Mike Patten to call me. Any new developments?

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Friday, October 10, 2003 4:43 PM
To: Trickey, Linda (CCI-Atlanta)
Subject: RE: Cox Agreements

Thanks for the update. Mike's phone number is 602-256-6100.

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
To: Lesa J. Storey
Sent: 10/10/03 12:54 PM
Subject: RE: Cox Agreements

Lesa,

I am almost finished with the review, but due to an unforeseen contract, won't finish until next week. Did you already send me Mike Patten's phone number? If so I will try and give him a call to find out what is going on.

Regards,

Linda Trickey

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Friday, October 10, 2003 11:21 AM
To: Trickey, Linda (CCI-Atlanta)
Subject: FW: Cox Agreements

Linda, a total of \$2,250,000 has been paid to date under the Vistancia Co-Marketing Agreement (so that error in the current draft will need to be corrected).

Lesa

-----Original Message-----

From: Cindy Voels
To: Mark Hammons
Cc: Lesa Storey (E-mail)
Sent: 10/10/03 8:09 AM
Subject: RE: Cox Agreements [mx]

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\$750,000		
3rd payment (due 10/1/03):	Check #2142	9/25/03
\$750,000		

This leaves one remaining payment due on 1/1/04.

Thanks
Cindy Voelz
Vistancia, LLC
Project Controller

-----Original Message-----

From: Mark Hammons
Sent: Thursday, October 09, 2003 6:28 PM
To: Cindy Voelz
Subject: FW: Cox Agreements

Could you please look into this

Thanks

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From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Thursday, October 09, 2003 5:28 PM
To: Mark Hammons
Subject: Cox Agreements

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So, please let me know the correct number.

Thanks,

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Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

LT-25

From: Trickey, Linda (CCI-Atlanta)
Sent: Wednesday, October 22, 2003 11:28 AM
To: Christie, Tisha (CCI-Phoenix)
Cc: Kelley, Mary (CCI-Phoenix)
Subject: RE: Revised Agreements

Redacted

-----Original Message-----
From: Christie, Tisha (CCI-Phoenix)
Sent: Friday, October 03, 2003 12:02 PM
To: Trickey, Linda (CCI-Atlanta)
Cc: Kelley, Mary (CCI-Phoenix)
Subject: FW: Revised Agreements

<< File: DVComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc >> << File: DVComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc >> << File: DVComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial and restated (09-25-03)1.doc >> << File: DVComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential and restated (09-25-03).doc >> Linda,

Redacted

Tisha Christie
Sr. Account Executive
623-322-7857
Tisha.Christie@Cox.com

-----Original Message-----
From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Friday, October 03, 2003 8:57 AM
To: Christie, Tisha (CCI-Phoenix)
Subject: FW: Revised Agreements

> -----Original Message-----
> **From:** Curt Smith
> **Sent:** Friday, October 03, 2003 7:29 AM
> **To:** Tisha Arthurs (E-mail); Mary Kelley (E-mail)
> **Cc:** Mark Hammons
> **Subject:** Revised Agreements

> Attached are revised copies of the Marketing and License Agreements for Vistancia. These move all financial payments from Cox to the License Agreements. Please review these and let me know if the changes are acceptable. We really need to get these done ASAP.
> Thanks for you help.
> > <<DVComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc>> > > <<DVComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc>> > > <<DVComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial and restated (09-25-03)1.doc>> > > <<DVComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential and restated (09-25-03).doc>>

C02261



T. S.

LT-26

From: Christle, Tisha (CCI-Phoenix)
Sent: 10/29/2003 9:50:54 AM (Eastern Time)
To: Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Dryer, Patrick
(CCI-Phoenix)
Subject: RE: Vistancia

REDACTED

Tisha Christle
Sr. Account Executive
623-322-7857
Tisha.Christle@Cox.com

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
Sent: Tuesday, October 28, 2003 5:05 PM
To: Christle, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix); Dryer, Patrick
(CCI-Phoenix)
Subject: FW: Vistancia

REDACTED

-----Original Message-----

From: Lesa J. Storey (mailto:lstorey@sbplc.com)
Sent: Tuesday, October 28, 2003 6:39 PM
To: Trickey, Linda (CCI-Atlanta)
Cc: Curt Smith (csmith@sunbeltholdings.com)
Subject: Vistancia

Linda,

Attached for your review are redlined copies of the revised Amended and Restated Co-Marketing Agreement, commercial Non-Exclusive License Agreement, and residential Non-Exclusive License Agreement, which incorporate the changes discussed in our conversation yesterday (there were no changes to the Amended and Restated Property Access Agreement).

Please let me know if the attached documents are in acceptable form. Once I receive your approval, I will circulate clean execution copies.

Best regards,

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111

COX012555

C02267



LT-27

Kelley, Mary (CCI-Phoenix)

From: Trickey, Linda (CCI-Atlanta)
Sent: Monday, December 01, 2003 7:39 AM
To: Chrstle, Tisha (CCI-Phoenix); Kelley, Mary (CCI-
Cc: Dryer, Patrick (CCI-Phoenix)
Subject: FW: Vistancia/Cox Agreements

REDACTED

-----Original Message-----

From: Lesa J. Storey [mailto:lstorey@sbplc.com]
Sent: Wednesday, November 26, 2003 7:15 PM
To: Trickey, Linda (CCI-Atlanta)
Cc: Curt Smith (csmith@sunbeltholdings.com); Julie King (jking@sunbeltholdings.com)
Subject: Vistancia/Cox Agreements

Linda,

Attached are final execution copies of the following.

- (1) Amended and Restated Property Access Agreement (please have Cox sign TWO originals and return them to me, for signature by my client);
- (2) Non-Exclusive License Agreement related to the Amended and Restated Property Access Agreement (since this will be recorded, Cox need only sign ONE original, please return it to me, for signature by my client);
- (3) Amended and Restated Co-Marketing Agreement (please have Cox sign TWO originals and return them to me, for signature by my client);
- (4) Non-Exclusive License Agreement related to the Amended and Restated Co-Marketing Agreement (please have Cox sign ONE original and return it to me, for signature by my client).

No changes were made to the last draft of the above documents, OTHER than the "provided that" language at the end of the last sentence of Section 6(b) as discussed in my conversation with Linda today.

Note to Curt Smith and Julie King: All of these documents must be signed by the lender (Residential Funding Corporation). It would be a good idea to forward these to the lender now for signature; that way we will be ready to go with everything when Cox returns its signed documents to me.

Let me know if you have questions.

Lesla J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-0111

12/1/2003

C02275

Vistancia/Cox Agreements

Page 2 of 2

Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbptc.com

<<Final Amended and Restated Commercial.pdf>> <<Final Amended and Restated Residential.pdf>> <<Final
Commercial Sublicense.pdf>> <<Final Residential Sublicense.pdf>>

12/1/2003

C02276

T-03471A-05-0064

PART 1 OF 2

BAR CODE # 0000046239

To review Part 2 please see:

BAR CODE #0000049726