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BEFORE THE ARIZONA CORPERATION . 1 2 2006 APR -5 1P 4: 08 **COMMISSIONERS** 3 JEFF HATCH-MILLER - CHAIRMAN WILLIAM A. MUNDELL AZ CORP COMMISSION 4 MARC SPITZER DOCUMENT CONTROL MIKE GLEASON 5 KRISTIN K. MAYES 6 7 DOCKET NO. T-03471A-05-0064 IN THE MATTER OF THE FORMAL COMPLAINT OF ACCIPITER 8 COMMUNICATIONS, INC., AGAINST VISTANCIA COMMUNICATIONS, L.L.C., **NOTICE OF FILING** 9 SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA TELCOM, LLC. 10 Cox Arizona Telcom, LLC, through undersigned counsel, hereby files the Direct 11 Testimony of Ivan Johnson, Tisha Christle and Linda Trickey in the above-caption docket. 12 RESPECTFULLY SUBMITTED this 5th day of April 2006. 13 14 COX ARIZONA TELCOM, LLC. 15 16 By. Michael W. Patten 17 ROSHKA DEWULF & PATTEN, PLC 18 One Arizona Center 400 East Van Buren Street, Suite 800 19 Phoenix, Arizona 85004 20 Attorneys for Cox Arizona Telcom, LLC 21 22 Original and 13 copies of the foregoing 23 filed this 5th day of April 2006 with: 24 **Docket Control** Arizona Corporation Commission 25 1200 West Washington Street Phoenix, Arizona 85007 26 27

2 Chairman Jeff Hatch-Miller 3 Arizona Corporation Commission 1200 West Washington Street Arizona Corporation Commission 1200 West Washington Street Commissioner William A. Mundell Arizona Corporation Commission 1200 West Washington Street Arizona Corporation Commission 1200 West Washington Street Commissioner Kristin K. Mayes Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007 27

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

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1	BEFORE THE ARIZONA CORPORATION COMMISSION
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3	COMMISSIONERS JEFF HATCH-MILLER - CHAIRMAN
4	WILLIAM A. MUNDELL MARC SPITZER
5	MIKE GLEASON KRISTIN K. MAYES
6	· · · · · · · · · · · · · · · · · · ·
7	IN THE MATTER OF THE FORMAL OF ACCIPITER DOCKET NO. T-03471A-05-0064
8	COMMUNICATIONS, INC., AGAINST
9	COMMUNICATIONS, INC., AGAINST VISTANCIA COMMUNICATIONS, L.L.C., SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA TELCOM, LLC.
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14	DIRECT TESTIMONY
15	OF
16	IVAN JOHNSON
17	ON BEHALF OF
18	COX ARIZONA TELCOM, L.L.C.
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	l)	
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

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

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

II. PURPOSE OF DIRECT TESTIMONY

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

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

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

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

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

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

III. **SUMMARY OF TESTIMONY**

Q. Please provide a summary of your Direct Testimony.

- The Settlement Agreement in this docket fully responds to the concerns raised by Accipiter Ă. and the Commission in regards to the MUE arrangement proposed and instituted in Vistancia by the Vistancia developers. Among other things, it provides as follows:
 - 1. The MUE previously granted by the City of Peoria to allow the Vistancia developers to hold private easements and control access to easements in Vistancia has been set aside, and, as a result, the private easements have been converted to public utility easements at the Vistancia development. This will allow any communications service provider access to the easements at no charge subject to normal regulatory and local construction and tax requirements.
 - 2. Cox has voluntarily agreed to provide, and is providing, some important accommodations to Accipiter. First, to facilitate Accipiter's access at Vistancia, Cox is providing conduit to Accipiter, both to the Vistancia development and 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 Those arrangements, which permissibly exist in many other planned arrangement. 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

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A.

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

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

IV. THE SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

O.	Have the various termination	documents been	executed and	recorded as	necessary?
v.	Trave the various termination	i uocumento deci	CACCUICU AHU	i ccoi aca a	THE COURSE T

- A. Yes and copies of the first page of the recorded documents were filed in the docket in this case on December 22, 2005.
- Q. Is Accipiter now able to install its facilities when the dry utilities trenches are open in the Vistancia development?
- A. Yes. It is my understanding that since the signing of the MOU, the Vistancia developers have been notifying Accipiter when the trenches are going to be opened and available for installation of dry utilities such as telecommunications and electricity. To my knowledge, Accipiter has been installing its facilities since that time. In fact, in one instance, Accipiter installed its facilities in a trench that was then covered before Cox installed its facilities. Cox had to go back and uncover the trench to put its facilities in that area.

Q. Other than the conversion of the private easement to a public easement, does Section III(1) provide anything further?

- A. Yes. In Section III(1)(c), both Cox and the Vistancia developers expressly agree that in the future they will not participate in a communications services private easement access arrangement in Arizona similar to the one used at Vistancia. As previously stated, Cox has not provided service to any other development where such a private easement arrangement was in place, either before or after Vistancia.
- Q. Do you believe that the conversion of the private easement to a public utility easement addresses concerns raised by Accipiter, Staff and the Commission?
- A. Yes. My impression, based on public statements and Staff feedback, is that the private easement which had not previously been used by a developer in Arizona caused the single most concern among Staff and the Commission about potential chilling of competition. This step in combination with other provisions of the Settlement Agreement

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

2. Provision of Conduit and Land to Accipiter

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

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

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

What is the land that is being provided to Accipiter? 0.

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

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

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

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

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

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

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

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

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

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

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3. **Telephone Resale to Accipiter**

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

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

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

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

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

Has Cox started providing wholesale service to Accipiter? Q.

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

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

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

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Cancellation of the Cox/Developer Exclusive Marketing Arrangements 4.

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

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

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

Q.	Have Cox and the Vistancia developers executed the documents cancelling the CM	[A
	and PAA?	

A. Yes, on November 30, 2005.

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

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

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

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

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ROSHKA DEWULF & PATTEN, PLC ONE ARIZONA CENTER 400 EAST VAN BUREN STREET - SUITE 800 PHOENIX, ARIZONA 85004

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

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

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

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

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

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

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

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

5. Payments to Accipiter

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

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

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

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

Other Settlement Agreement Provisions 6.

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

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

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

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

V. THE SETTLEMENT AGREEMENT SHOULD BE APPROVED

Why should the Settlement Agreement be approved? Q.

- A. First and foremost, the complainant in this docket, Accipiter, has signed the Settlement Agreement and is (and has been) benefiting from the Agreement. The Agreement addressed all of Accipiter's concerns; access to rights of way and customers, elimination of preferred provider arrangements, and payment of damages. Second, as explained above, Cox believes that the Settlement Agreement addresses the concerns that the Commission and Staff have expressed over the situation at Vistancia at least to the extent that Cox and the settling parties could address those concerns. Cox is not in a position to dictate the actions of a municipal government. Third, to the extent that there are remaining concerns about exclusive marketing arrangements or even access issues that affect the telecommunications industry as a whole, the Commission already has a generic docket opened that can address those issues while providing due process to all affected parties.
- Are there any other considerations that the Commission should take into account in Q. deciding whether to approve the Settlement Agreement and dismiss the complaint in this docket?
- Yes, I think there are two things that need to be considered to put this docket in context: A.

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

Q. Please discuss the preferred provider issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. **CONCLUSION**

- Q. What is Cox requesting the Commission do in this docket?
- A. Cox requests that the Commission approve the Settlement entered into by the Complainant and Respondents in this docket and dismiss this docket without further action by the Commission.
- Q. Does that conclude your testimony?
- A. Yes.

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BEFORE THE ARIZONA CORPORATION COMMISSION

	1	BEFORE THE ARIZONA CORPORATION COMMISSION
	2	COMMISSIONERS JEFF HATCH-MILLER - CHAIRMAN WILLIAM A. MUNDELL
	4	MARC SPITZER MIKE GLEASON
	5	KRISTIN K. MAYES
•	6)
,	7	IN THE MATTER OF THE FORMAL COMPLAINT OF ACCIPITER O DOCKET NO. T-03471A-05-0064
	8	COMMUNICATIONS, INC., AGAINST VISTANCIA COMMUNICATIONS, L.L.C., SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA TELCOM, LLC.
	9	AND COX ARIZONA TELCOM, LLC.
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	17	ON BEHALF OF
	18	COX ARIZONA TELCOM, L.L.C.
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	26	April 5, 2006
	27	April 3, 2000

ATTACHMENT

IJ-1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of this 3 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).

- 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 nonmaterial modifications to these documents or additional nonmaterial 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 rightsof-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

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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 Accipter may seek other appropriate remedies including but not limited to injunctive relief.

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

c.

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 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 nonbreaching 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.

harle Louder

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

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

Charles Gowder
President & CEO

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

By:

I. Stephen Rizley
General Manager and \

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: Holling Miller

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

Curtis E. Smith, its Chief Operating Officer

		NA TELCOM, LLC, nited liability company			
	By:	J. Stephen Rizley General Manager and VP			
VISTA	NCIA,	LLC, a Delaware limited liability company			
By:	Shea Homes Southwest, Inc., an Arizona corporation, its Member				
	By:	Its:			
By:		It Pleasant Point Investors, L.L.C., an limited liability company, its Member			
·	Ву:	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:

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

EXHIBIT "1A"

WHEN RECORDED RETURN TO:

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

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: _____

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: _____

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

Curtis E. Smith, its Chief
Operating Officer

STATE OF ARIZONA)			
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County of Maricopa)			
The foregoing inc	tenenant was	acknowledged h	afora ma this	day of
The foregoing ins , 2005, by				day of
of Shea Homes Southwest	Inc. an Ariz	ona cornoration	a Member in She	a Sunbelt Pleasant
Point, LLC, a Delaware lim				
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		Notary	Public	
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My Commission Expires:				

County of Maricopa)ss)		
	by Curtis E. Smith, the ona corporation, the Generality, the Manager ompany, a Member in the Manager of Vistano	eneral Partner in Sunbel of Sunbelt Pleasant Poi Shea Sunbelt Pleasant 1	cer of Sunbelt Holdings t PP, LLLP, an Arizona int Investors, L.L.C., an Point, LLC, a Delaware
		Notary Public	
My Commission Expires:		notary ruone	
STATE OF ARIZONA)		
County of Maricopa)ss)		X.
The foregoing instr 2005, by	na corporation, a Me company, the Mana	ger of Vistancia Comr	of Shea Homes Pleasant Point, LLC, a
		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 C		CTIO	N FUNDI	NG COI	RP., a Dela	aware					
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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 _____, 2005, by and between VISTANCIA and entered into as of the day of 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

- 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").
- В. 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.

set to	rth above.	
CITY	7:	
	OF PEORIA, ARIZONA, an Arizona ered 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

IN WITNESS WHEREOF, the parties have executed this Termination as of the date first

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:______

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)		·
	nt was acknowledged before me this	
chartered municipal corporation.	Keegan, as Mayor of the City of Peoria, Ar	izona, an Arizona
	Notone Duli's	
My commission expires:	Notary Public	
		•
STATE OF ARIZONA)		
County of Maricopa)ss		
The foregoing instrument	was acknowledged before me this	day of
0	2005, by f Shea Homes Southwest, Inc., an Arizo	, the na corporation, a
	ware limited liability company, on behalf the	
	Notary Public	
My Commission Expires:		

STATE OF ARIZONA)			
)ss			
County of Maricopa	.)			
The foregoing ins		_	before me this the Chief Operating	day of
Holdings Management, Inc an Arizona limited liability L.L.C., an Arizona limited liability company, on behal	c., an Arizona of limited partner liability comp	corporation, the rship, the Manag	General Partner in S ger of Sunbelt Pleasa	Sunbelt PP, LLLP, ant Point Investors,
		Notary Public		
My Commission Expires:				
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STATE OF ARIZONA) .			
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County of Maricopa)			
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My Commission Expires:			<i>y</i>	

STATE OF ARIZONA)		
)ss		
County of Maricopa)		•
The foregoing in	strument was ackn	nowledged before me this	day of
Tito ToroBornB	, 2005,	by	, the
	of Shea Ho	mes Southwest, Inc., an Arizon	a corporation, a
Member in Vistancia, LL		ited liability company, the Mana	-
Communications, L.L.C.,	an Arizona limited l	iability company, on behalf thereo	of.
		·	
		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 FUNDI	NG CORP., a D	elaware		
corporation				
By:				
Its:			*	
STATE OF	_)) ss.			
County of	.)			
On this day of Public in and for	said Count	y and Sta	me, the undersignate, personally wn to me (or pro	appeared
the basis of satisfactory evidence instrument, acknowledged to m and that by his/her signature on a person acted, executed the within	ce) to be the p the that he/she ex the instrument t	erson whose nar xecuted the same	ne is subscribed in his/her author	to the within rized capacity,
WITNESS my hand and o	official seal.			
	Not	tary Public		
	•			

17805-1/1307026

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 "<u>Termination</u>") is made and entered into as of the ____ day of _____, 2005, by and between VISTANCIA COMMUNICATIONS, L.L.C., an Arizona liability company ("<u>Access Entity</u>") and COXCOM, INC., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its affiliates ("<u>Cox</u>").

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").

В.	WHEREAS, the (CSER has been t	terminated (or is	being terminated	d concurrently
with the r	ecordation of this Te	rmination) purs	uant to that cert	ain Termination	of Common
Services I	Easements and Restric	tions dated	, 2005,	and recorded _	
2005, in In	strument No. 2005	, officia	l records of Mario	copa County, Ar	izona.
with the r Easements	WHEREAS, the Precordation of this Test and Indemnity dates to No. 2005-	rmination) pursid,	uant to that certa 2005, and recor	ain Termination ded	of Multi-Use

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.

oct form above.								
ACCESS ENTITY:		COX:						
VISTANCIA COMMUNIL.L.C., an Arizona limited		COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX						
By: Vistancia, LLC, a Dela liability company, its M		By:	311121					
By: Shea Homes Sout Arizona corporati	· · · · · · · · · · · · · · · · · · ·		Its:					
By:								
By: Sunbelt Pleasant I L.L.C., an Arizon company, its Men	a limited liability							
By: Sunbelt PP, I limited liabil partnership, i	ity limited							
	oldings Management, rizona corporation, al Partner		*6.7%					
	is E. Smith, its							

STATE OF ARIZONA	
County of Maricopa)ss)
The foregoing ins	strument was acknowledged before me this day of COXCOM, INC., a Delaware corporation d/b/a/ COX
COMMUNICATIONS PH	
My Commission Expires:	Notary Public
My Commission Expires.	
STATE OF ARIZONA))ss
County of Maricopa)
Holdings Management, Incan Arizona limited liability L.L.C., an Arizona limited	strument was acknowledged before me this day o, 2005, by Curtis E. Smith, the Chief Operating Officer of Sunbelc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP y limited partnership, the Manager of Sunbelt Pleasant Point Investors I liability company, a Member in Vistancia, LLC, a Delaware limited Ianager of Vistancia Communications, L.L.C., an Arizona limited If thereof.
	Notary Public
My Commission Expires:	

STATE OF ARIZONA)	
)s	S
County of Maricopa)	
The foregoing instrum	ent 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
	izona 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 C		JCTION	N FUNDI	NG CO	RP., a Del	laware			•		
corpore											
Ву:	-		-								
	Its: _										
	E OF		· · · · · · · · · · · · · · · · · · ·	_) _)ss							
County	of		·····	_)	•						
	On this					2005, b	efore m	e, the u	ndersig	ned, a 1	Votary
Public	in	and	for	said	County		State ly know	e, pe n to me	•	,	peared me on
instrun and tha	nent, ackı	nowledg her sign	ged to mature on	ne that h the instr	e the per e/she exe ument the	rson who	ose nam e same i	e is sub n his/he	scribed r autho	to the rized cap	within pacity,
	WITNES	SS my l	nand and	official s	seal.						
					Nota	ry Public	;				

17805-1/1307021

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)

- 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 WITNIESS WHEREOF the narties have executed this Termination as of the date first set

ACCESS ENTITY:	COX:					
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company	COXCOM, INC., a D d/b/a/ COX COMMUN PHOENIX	_				
By: Vistancia, LLC, a Delaware limited liability company, its Manager	·	Som y				
	By:					
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member	Its:					
	,					
By:						
By:						
By: Sunbelt Pleasant Point Investors,						
L.L.C., an Arizona limited liability company, its Member						
Day Cambolt DD LLLD on Anigona						
By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager						
By: Sunbelt Holdings Management,						
Inc., an Arizona corporation,	No.					
its General Partner						
By:						
Curtis E. Smith, its						

Chief Operating Officer

STATE OF ARIZONA)	
County of Maricopa)ss)	
	rument was acknowledged before me this	day of , the on d/b/a/ COX
COMMUNICATIONS PHO	ENIX, on behalf thereof.	
	Notary Public	
My Commission Expires:	*	
STATE OF ARIZONA))ss	
County of Maricopa)	
The foregoing instr	rument was acknowledged before me this, 2005, by Curtis E. Smith, the Chief Operating Of	day of
an Arizona limited liability l L.L.C., an Arizona limited l	, an Arizona corporation, the General Partner in Sur limited partnership, the Manager of Sunbelt Pleasant liability company, a Member in Vistancia, LLC, a D nager of Vistancia Communications, L.L.C., an	nbelt PP, LLLP, Point Investors, Pelaware limited
	·	
Mr. Commission Emilia	Notary Public	
My Commission Expires:		

STATE OF ARIZONA)				
)ss				
County of Maricopa)				
ant c · · ·			1 1 1 6		1 6
The foregoing in			dged before r	ne this	day of
	, 20	05, by			, the
	of S	nea Homes	Southwest, Inc	., an Arizona	corporation, a
Member in Vistancia, Ll	LC, a Delaw	are limited l	iability compar	nv. the Manag	er of Vistancia
Communications, L.L.C.,	•		• •	• •	
Communications, E.E.C.,		inited Haerin	y company, on	ochur morcor	•
) T . D 11'		
			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 C	CONSTRU ation	JCTIO	N FUND	ING COI	RP., a De	elaware				
By:	Its:									
	118.					·	_			
		oze.								
STAT	E OF)						
Count	y of) ss. _)						
Public	On this in	and	day of for	said	County	and	State	e, per	sonally	I, a Notary appeared d to me on
instrur and th	nent, ack	nowledg her sign	ged to n ature on	ne that he the instr	e the pe e/she exc ument th	rson who	ose nam e same i	e is subs n his/her	scribed to authorize	the within ed capacity, f which the
	WITNE	SS my l	and and	official s	eal.					
	•									
	<i>y</i> *								,	
					Nota	ry 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 Roadwa	ay and Utility Easement (the '	" <u>Easement</u> ") i	is made and	entered into a	s of the
day of	, 2005, by and between	VISTANCIA	COMMUN	ICATIONS,	L.L.C.,
an Arizona liability	company (the "Access Entity	z") and VISTA	NCIA, LLC	C, a Delaware	limited
liability company (t	he " <u>Master Developer</u> ").				

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 <u>paragraph 1</u> 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. <u>Grant of Roadway Easement</u>. 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 "<u>Roadway</u> 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 quite 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. <u>Abandonment</u>. 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. <u>Miscellaneous</u>. 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.

A CICECO ENTREPOSZ.	MACRED DEVEL ODED		
ACCESS ENTITY:	MASTER DEVELOPER:		
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company	VISTANCIA, LLC, a Delaware 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: Shea Homes Southwest, Inc., an Arizona corporation, its Member	By:		
By:	By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member		
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 PP, LLLP, an Arizona limited liability limited partnership, its Manager	By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner		
By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner	By: Curtis E. Smith, its Chief Operating Officer		
By:Curtis E. Smith, its Chief			

Operating Officer

STATE OF ARIZONA)	
County of Maricopa)ss)	
	trument was acknowledged b	
of Shea Homes Southwes	t, Inc., an Arizona corporation, nited liability company, on behal	, the
Tomit, EBC, a Dolaware in	nted habitity company, on ochan	ir thorox.
	Notary	Public
My Commission Expires:		
STATE OF ARIZONA)	
Country of Mariana)ss	
County of Maricopa)	
	strument was acknowledged by Curtis E. Smith, the Chief C	pefore me this day of Operating Officer of Sunbelt Holdings
Management, Inc., an Ariz	ona corporation, the General Pa	rtner in Sunbelt PP, LLLP, an Arizona
-		elt Pleasant Point Investors, L.L.C., an abelt Pleasant Point, LLC, a Delaware
limited liability company,	•	ioen i leasain i oint, LLC, a Delaware
	Notary Public	
My Commission Evnires		

STATE OF ARIZONA)	• •	
County of Maricopa)ss)		
	by Curtis E. Smith, the ona corporation, the Generality, the Manager ompany, a Member in the Manager of Vistander	of Sunbelt Pleasant Poir Shea Sunbelt Pleasant P	er of Sunbelt Holdings PP, LLLP, an Arizona at Investors, L.L.C., an oint, LLC, a Delaware
My Commission Expires:		Notary Public	
STATE OF ARIZONA))ss		
County of Maricopa)		
The foregoing instruction of the foregoing instruction of the second control of the foregoing instruction of the foregoing instructi	na corporation, a Me company, the Mana	ger of Vistancia Comm	of Shea Homes Pleasant Point, LLC, a
		Notary Public	
My Commission Expires:		-	

CITY ACCEPTANCE PAGE

The Mayor and Council accept Easement.	ot the aforementioned dedicated Roadw	ay and Utility
The City Clerk shall record the Maricopa County Recorder's office.	original of this Roadway and Utility Eas	sement with the
Accepted by the Mayor and Co	ouncil of the City of Peoria, Arizona thi	s day of
	CITY OF PEORIA, ARIZONA, an a municipal corporation	Arizona
	John C. Keegan, Mayor	· · · · · · · · · · · · · · · · · · ·
ATTEST:		
Mary Jo Kief, City Clerk	_	

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 Roadway and Utility Easement, and agrees that the Roadway and Utility Easement 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 or
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

VISTANCIA MAINTENANCE CORPORATION CONSENT

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

		MAINTENA rporation	NCE CORP	ORATION	, an Arizon	ıa			
By:									
_,	Its:								
STAT	TE OF A	ARIZONA))ss						
Coun	ty of Ma	aricopa)						
	The f	oregoing instr	rument was a	cknowledg	ged before r	ne this _	day of _		,
2005,	by	Corporation,		, the				_ of	Vistancia
Main	tenance	Corporation,	an Arizona n	on-profit c	orporation,	on behal	f thereof.		
					Notary P	ublic	· · · · · · · · · · · · · · · · · · ·		
My C	Commiss	sion 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)

SSS County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of ___ of Vistancial 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: STATE OF ARIZONA)ss County of Maricopa The foregoing instrument was acknowledged before me this ____ day of ___ ___, the ____ 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).
- <u>Section 1.02</u> "<u>Association</u>" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- <u>Section 1.03</u> "<u>Cable Television Services</u>" 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.
- <u>Section 1.04</u> "<u>Combined Easement Area</u>" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.
- <u>Section 1.05</u> "<u>Communication Service Provider</u>" 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.
- <u>Section 1.06</u> "<u>Communication Services</u>" 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; <u>provided</u>, <u>however</u>, that the term or phrase "Communication Services" shall not include Excluded Devices.
- <u>Section 1.07</u> "<u>Community Intranet Services</u>" 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.
- <u>Section 1.08</u> "<u>Community Technology Services</u>" 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.
- <u>Section 1.09</u> "<u>Development</u>" 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 "<u>Exhibit A-Supplement</u>" 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 <u>Section 1.09</u> 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.

<u>Section 1.10</u> "<u>Excluded Devices</u>" 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, ecommerce, 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.

<u>Section 1.12</u> "<u>E-commerce Transaction Services</u>" 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; <u>provided, however</u>, 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).
- <u>Section 1.15</u> "<u>Master Declaration</u>" 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.
- <u>Section 1.16</u> "<u>Owner</u>" 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.
- <u>Section 1.18</u> "<u>Person</u>" 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.
- <u>Section 1.21</u> "<u>Security Monitoring Services</u>" 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; <u>provided</u>, <u>however</u>, 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.
- <u>Section 1.22</u> "<u>Service Easement Area</u>" 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.
- <u>Section 1.24</u> "<u>Telephone Services (long distance)</u>" 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.
- <u>Section 1.25</u> "<u>Village Declaration</u>" 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.
- <u>Section 1.26</u> "<u>Vistancia Maintenance Corporation</u>" 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/Map ^t	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 <u>Section 11.2</u> 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 <u>Section 7.2</u> 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 <u>Section 8.1</u> of the Declaration, the words "subject to and limited by the CSER";
- 2.4 in the 15th line of <u>Section 9.1</u> 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 <u>Section 10.1</u> of the Declaration, the words "or the CSER";
 - 2.6 the last sentence of <u>Section 10.2</u> of the Declaration, in its entirety;
- 2.7 in the 1^{st} line of <u>Section 10.3</u> of the Declaration, the words "Subject to and as limited by the CSER";
- 2.8 in the last line of <u>Section 10.4</u> 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 23^{rd} 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 <u>Section 11.2</u> 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 6^{th} and 7^{th} lines of <u>Section 13.1</u> 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 Certifica	ate of Amendment is m	ade this da	ıy of	_, 2005.
		Mark Hammon	S	
		President, Vista	ancia Maintenan	ice
		Corporation, ar corporation	n Arizona non-p	rofit
		*.		
STATE OF ARIZONA)		•	
G)ss			
County of Maricopa)			
	ment was acknowledg			
2005, by Mark Hammons, the profit corporation, on behalf		ia Maintenance	Corporation, an	Arizona non
x				
		Notary Public		
My Commission Expires:		Trotaly I dolle		

AllESI:	
I, the undersigned, do hereby attest:	
That I am the duly elected and acting Sec Arizona nonprofit corporation; and	cretary of Vistancia Maintenance Corporation, an
	Amendment constitutes the Second Certificate of Members of Vistancia Maintenance Corporation, and the Declaration.
IN WITNESS WHEREOF, I have here, 2005.	eunto subscribed my name this day of
	Sandy Esmay Secretary, Vistancia Maintenance Corporation, an Arizona non-profit corporation
STATE OF ARIZONA)	
County of Maricopa)	
The foregoing instrument was a 2005, by Sandy Es Corporation, an Arizona non-profit corporation	may, the Secretary of Vistancia Maintenance
corporation production	

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

Sunbelt Pleasant Point Investors, L.L.C., an Arizona By: limited liability company, its Managing Member Sunbelt PP, LLLP, an Arizona limited liability By: 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 The foregoing instrument was acknowledged before me this

, 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:

County of Maricopa

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)	
Management, Inc., an Arizona corporation, the Gelimited liability limited partnership, the Manager Arizona limited liability company, the Managing	Chief Operating Officer of Sunbelt Holdings meral Partner in Sunbelt PP, LLLP, an Arizona of Sunbelt Pleasant Point Investors, L.L.C., an Member in Vistancia, LLC, a Delaware limited
liability company, the Manager of Vistancia (liability company, on behalf thereof.	Communications, L.L.C., an Arizona limited
naomity company, on benan mereor.	
	Notary Public
My Commission Expires:	

17805-1/1307028

EXHIBIT "1G"

OF A MEMBERS' MEETING

OF

VISTANCIA MAINTENANCE CORPORATION, an Arizona non-profit corporation

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 sev	enty-five percent	cent (75%) of the total
authorized Membership votes in the Corporation, hereby ca	sts its affirmat	ive vote for adoption of
the amendment to the Declaration set forth in the Second	d Certificate of	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 <u>Appendix A</u> 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 <u>Appendix A</u> 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

<u>Section 1.01</u> 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 <u>Schedule 1.01</u> attached hereto.

<u>Section 1.02</u> 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 <u>Schedule 1.01</u> 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.

<u>Section 1.07</u> 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 <u>Article IV</u> 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").

<u>Section 2.03</u> <u>Assignment and Sublicensing</u>. 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.

<u>Section 2.04</u> <u>Use of Easement</u>. 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

<u>Section 3.01</u> <u>Indemnification</u>. 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 Licensee and/or any applicable law, regulation or governmental requirement; <u>provided</u>, <u>however</u>, 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.

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

<u>Payment of Franchise Fees</u>. 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 <u>Section 4.01</u> (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 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 4.02 (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

<u>Receipt of Notice</u>. If any notice, demand or other communication is served personally (methods (i) and (iv) of <u>Section 5.01</u>, 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 <u>Section 5.01</u>, 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 <u>Section 5.01</u> above), service will be conclusively deemed made at the time of confirmation of delivery.

<u>Section 5.03</u> <u>Delivery Information</u>. 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).

<u>Section 5.04</u> <u>Change of Address</u>. 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: _____

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

Curtis E. Smith, its Chief
Operating Officer

Schedule: 1.01 Other Easements or Licenses (See Attached)

STATE OF ARIZONA)				
County of Maricopa)ss)				
The foregoing	, 2	2005, by			day of
41 C	of Acc	ipiter Commur	ications Incorp	orated, a Nevada	corporation, on behalf
thereof.					. •
			Notary Pub	lic	
My Commission Expires:					
STATE OF ARIZONA)				
County of Maricopa)ss)				
The foregoing	instrument v				day of
Management, Inc., an Article liability limited partnersh liability company, a Men Vistancia Communication	izona corporati ip, the Manage nber in Vistan	on, the General or of Sunbelt I cia, LLC, a D	al Partner in S Pleasant Point elaware limite	unbelt PP, LLL Investors, L.L.C d liability comp	P, an Arizona limited C., an Arizona limited pany, the Manager of
			Notary Publ	lic	
My Commission Expires:					

STATE OF ARIZONA)				
County of Maricopa)ss)				÷
	of Shea	05, by Homes Southwest	, Inc., an Ariz	ona corporation	
Vistancia, LLC, a Delawa Arizona limited liability of			nager of Vistan	cia Communica	tions, L.L.C., an
		Not	tary Public		·
My Commission Expires:	:			• .	
STATE OF ARIZONA))ss				
County of Maricopa)				
The foregoing Management, Inc., an Ar liability limited partnersh liability company, a Mem	, 2005, by or izona corporation ip, the Manager	of Sunbelt Pleasan	e Chief Operati ner in Sunbelt at Point Investo	ng Officer of Su PP, LLLP, an A ors, L.L.C., an A	Arizona limited Arizona limited
My Commission Evnires		Not	ary Public		

STATE OF ARIZONA)				
County of Maricopa)ss)				
The foregoing		vas acknowledged 105, by	before me	this	day of
	of Shea	Homes Southwest	, Inc., an Ari	zona corporat	ion, a Member in
Vistancia, LLC, a Delawa	are limited liabil	ity company, on beh	alf thereof.		
•		Not	ary 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:		<u> </u>
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		personally
• • • • • •		tisfactory evidence) to be the person whose name is subscribed
		that he/she executed the same in his/her authorized capacity,
	nstrument t	the person or the entity upon behalf of which the person acted,
executed the within instrument.		
WITNESS my hand and of	ficial seal	
William III IIII IIII IIII	arozar boar.	
•		
		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

Sung bearing in

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

H:\10013.DIR\ACCIPITER\Settlement Agreement\Ex4-Bill of Sale v2.doc

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.

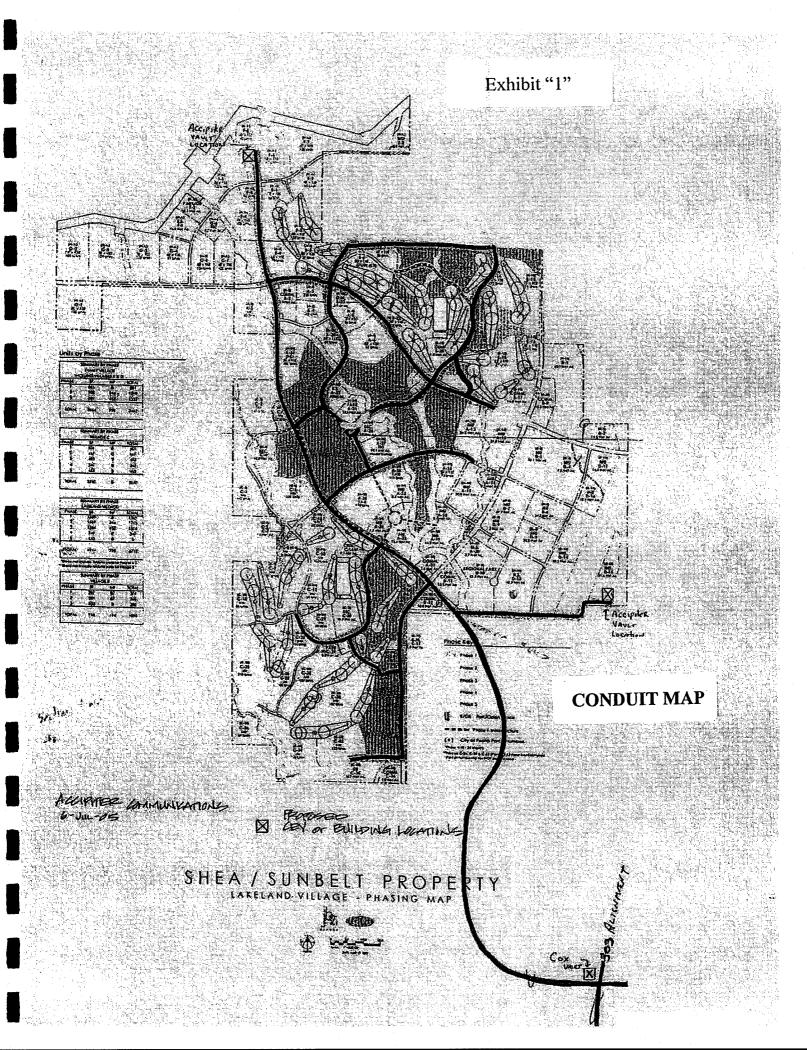
Seller shall warrant and defend title to the Assets with respect to the acts of all parties during the time period of Seller's ownership of the Assets.

		, 2005.	s executed these presents by its duly authorized officer
			COXCOM, INC., a Delaware corporation, d/b/a COX COMMUNICATIONS Phoenix
			By
			J. Steven Rizley General Manager and VP
STATE OF))	
The			acknowledged before me this day of, the of CoxCom, Inc., a
Delaware co			,
			Notary Public
My Commis	sion Expires	:	
		<u> </u>	

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.



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 m	ade as
of this	day of	, 2005, by VISTANCIA, LLC, a Delaware li	mited
liability	y company (hereir	nafter 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 County of Maricopa))ss.					
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				

A



EXHIBIT A

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

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

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

0.0367 Acres-

SOUTHWEST COR. SECTION 30

S89'09'15"W 873.10

POB

	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



Stanley Consultants INC of Continuous Strains

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
	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 <u>Exhibit A</u> 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. <u>Improvement Restrictions</u>. 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. <u>Use Restrictions and Maintenance Requirements.</u>
 - (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) <u>No Storage: Exceptions</u>. 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) <u>Condition Prior to Construction</u>. 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) <u>Condition During Construction</u>. The Property shall be kept in a neat, orderly and clean condition during the period of any construction thereon.
- (f) <u>Surface Condition After Construction</u>. 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) <u>Maintenance</u>. The Improvements (and any other Improvements approved in accordance with <u>Section 1</u>) 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) <u>Temporary Occupancy and Temporary Buildings</u>. No temporary buildings or structures of any kind shall be placed on the Property at any time.
 - (k) <u>Mineral Exploration</u>. 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.

4

- (l) <u>Firearms</u>. 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. <u>Approval of Additional Covenants</u>. No additional covenants, conditions, restrictions or easements may be recorded against the Property without the prior written approval of Declarant and Owner.
- 4. <u>Subdivision of Property</u>. 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) <u>Definition</u>. 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. <u>Term.</u> 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 <u>Section 11</u> 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. <u>Termination and Amendment</u>. 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. <u>Waiver</u>. 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. <u>Notices</u>. 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. <u>Enforcement</u>. This Declaration may be enforced only by Declarant, and no other person shall have any right or cause of action hereunder.

16. Definitions.

- (a) <u>Declarant Definition</u>. 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
	Operati	ng Oi	fficer	

STATE OF ARIZONA	·)			-
) ss			
County of Maricopa)	•		
The forego	ing instrument w			
of	_, 2005, by Curtis	E. Smith, the Chi	ef Operating Office	er of Sunbelt
Holdings Management, Inc	c., an Arizona corpo	oration, the Gener	al Partner in Sunb	elt PP. LLLP.
an Arizona limited liability				
L.L.C., an Arizona limite				
Delaware limited liability co			111111111111111111111111111111111111111	aioia, bbo, a
	,p,,			
	Notary Pu	ıblic		
	•			
My Commission Expires:				

EXHIBIT A

(Legal Description of Property)



EXHIBIT A

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

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

0.0367 Acres-

POB

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

SOUTHWEST COR SECTION 30

	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 Enforcing Environmental and Construction Services -

When Recorded, Mail to:

EXHIBIT "5C"

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

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	s E. Smith
	Its:	Executive Vice Presiden

STATE OF ARIZONA)	
) Ss.	
County of Maricopa)	
Curtis E. Smith, the Execut corporation, the General Part the Manager of Sunbelt Ple	s acknowledged before me this day of tive Vice President of Sunbelt Holdings Manager ther of Sunbelt PP, LLLP, an Arizona limited liabil easant Point Investors, LLC, an Arizona limited a Delaware limited liability company, for and on beh	ity limited partnership, liability company, the
	Notary Public	



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

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

EXHIBIT A

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;

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

SCALE: 1"=100" SW 1/4 SEC 30 T 5 N R 1 E

0.0367 Acres-

S89°09'15"W 873.10

SOUTHWEST COR. SECTION 30

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	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



Stanley Consultants INC and Communication Services -

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 (herein	after 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

	Curtis E. Smith, its Chief Operating Office				
STATE OF ARIZONA))ss.				

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.

County of Maricopa

My commission expires:

Notary Public

D---

EXHIBIT A



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

> 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;

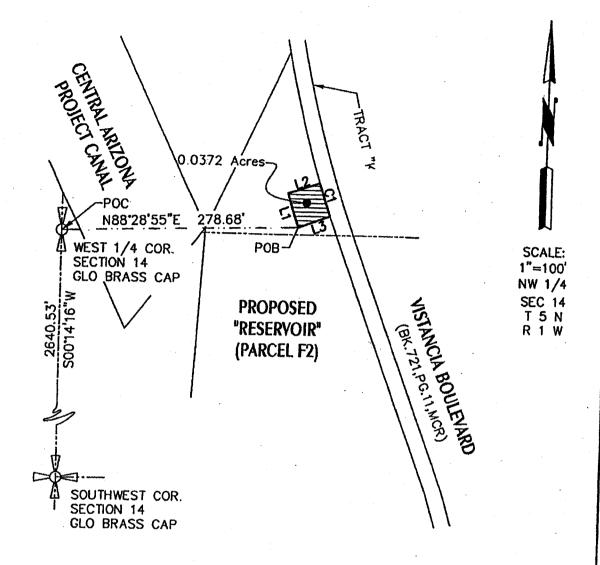
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

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.

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	· 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 T	ABLE	
CURVE	DELTA ·	RADIUS	CH. BEARING	LENGTH
C1			S18'30'04"E	40.01



Vistancia



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	Develop	pment Re	strictions (tl	he " <i>Declarati</i>	on") is è	executed
as of the day of	, 2005,	by VIST	ANCIA, LL	C, a Delawar	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 <u>Exhibit A</u> 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. <u>Improvement Restrictions</u>. 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.
 - General Prohibited Uses. No noxious, illegal or offensive use or operation, nor (b) 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) <u>No Storage</u>; <u>Exceptions</u>. 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) <u>Condition Prior to Construction</u>. 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) <u>Condition During Construction</u>. The Property shall be kept in a neat, orderly and clean condition during the period of any construction thereon.
- (f) <u>Surface Condition After Construction</u>. 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) <u>Compliance with Law</u>. 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) <u>Maintenance</u>. The Improvements (and any other Improvements approved in accordance with <u>Section 1</u>) 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) <u>Temporary Occupancy and Temporary Buildings</u>. No temporary buildings or structures of any kind shall be placed on the Property at any time.
 - (k) <u>Mineral Exploration</u>. 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.

- (I) <u>Firearms</u>. 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) <u>Signs</u>. 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. <u>Approval of Additional Covenants</u>. No additional covenants, conditions, restrictions or easements may be recorded against the Property without the prior written approval of Declarant and Owner.
- 4. <u>Subdivision of Property</u>. 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) <u>Compliance</u>. 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) <u>Definition</u>. 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. <u>Term.</u> 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 <u>Section 11</u> 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.
- 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. <u>Termination and Amendment</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>; <u>Interpretation</u>; <u>Gender</u>. 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. <u>Notices</u>. 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. <u>Enforcement</u>. This Declaration may be enforced only by Declarant, and no other person shall have any right or cause of action hereunder.
- 16. Definitions.
 - (a) <u>Declarant Definition</u>. 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
	Operati	ng O	fficer	

STATE OF ARIZONA	·)	·-	
) ss		
County of Maricopa)	•	
The forego	ing instrument was acknowledg	ed before me this	day
of	, 2005, by Curtis E. Smith, the C	hief Operating Officer of Su	nbelf
	., an Arizona corporation, the Gen		
	limited partnership, the Manager of		
	d liability company, the Managir		
	ompany, for and on behalf thereof.		.,
•			
	Notary Public		
My Commission Expires:	Notary Public		
My Commission Expires:	Notary Public		
My Commission Expires:	Notary Public		

EXHIBIT A

(Legal Description of Property)

Stanley Consultants INC.

EXHIBIT A

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

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



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;

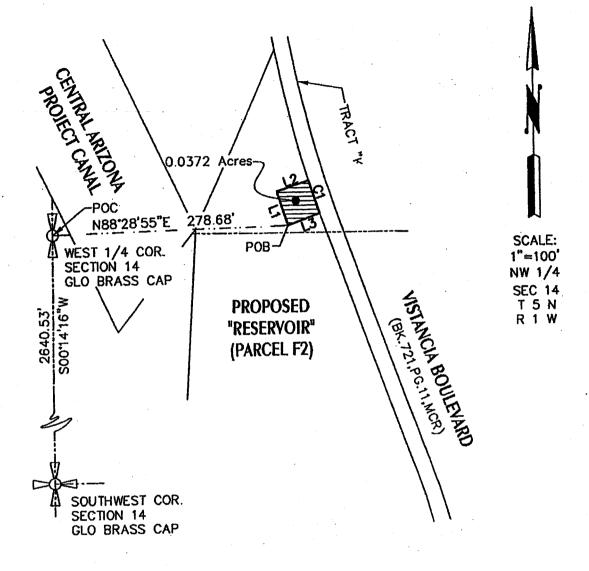
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

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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LINE TABLE			
LINE	BEARING	LENGTH	
L1	N18'30'04"W	41.13'	
L2	N72"18'09"E	40.00'	
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CURVE TABLE				
CURVE	DELTA	RADIUS	CH. BEARING	LENGTH
C1	1'36'27"	1426.00	S18'30'04"E	40.01



Vistancia



Storley Group Company

Stanley Consultants INC of Conductor Service - Nacional

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

) Ss.	
County of Maricopa)	
Curtis E. Smith, the Executorporation, the General Parthe Manager of Sunbelt Plants	s acknowledged before me this day of tive Vice President of Sunbelt Holdings Ma tner of Sunbelt PP, LLLP, an Arizona limited easant Point Investors, LLC, an Arizona lin a Delaware limited liability company, for and o	nagement, Inc., an Arizona liability limited partnership, ited liability company, the
Tribunda of American, Education,		
,	Notary Pu	
My Commission Expires:		



EXHIBIT A

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

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



LEGAL DESCRIPTION

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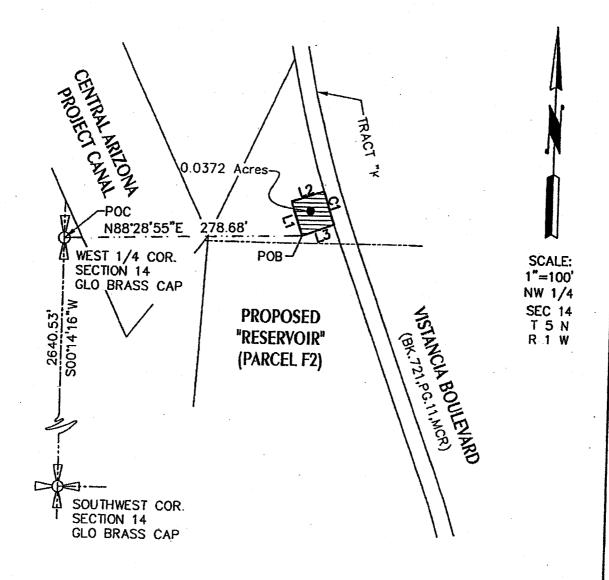
Thence 40.01 feet along said west line of Tract "K" and along the arc of said curve to the left, having a radius of 1426.00 feet, through a central angle of 01°36'27" and a chord bearing S 18°30'04" E;

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	LINE TABLE			
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		CURVE T		
CURVE		RADIUS	CH. BEARING	LENGTH
C1	1'36'27"	1426.00'	S18'30'04"E	40.01



Vistancia

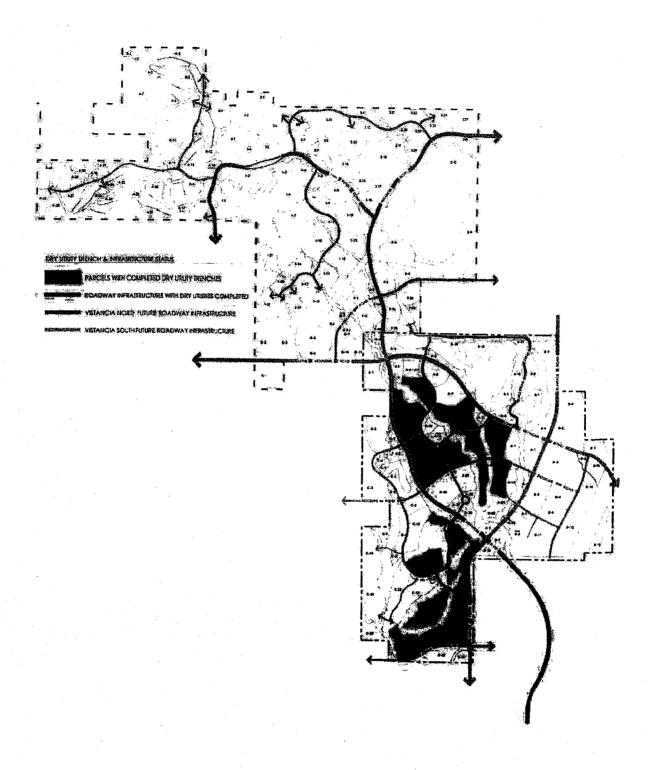


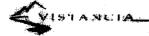
A Storley Group Company

Stanley Consultants INC of Control Street

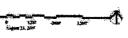
EXHIBIT B (North Parcel)

- 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.





TRENCH CLOSURE MAP



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Vistancia, LLC &

COXCOM, INC. RESIDENTIAL SERVICE AGREEMENT

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'.
 - (1) "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 <u>Exhibit C</u>, 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 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.
 - (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 <u>Section 10</u>, 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 <u>subsection 5(d)</u>, 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 <u>subsection (a)</u>, 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 <u>subsections (b) and (c)</u> 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 <u>subsections</u> (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 <u>Section 11</u>. 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 <u>Section 11</u>.

- (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 <u>Section 11</u>.
- (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 <u>Section 9</u>.
- (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 <u>Section 2</u> or termination as permitted under <u>Section 9</u>, 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.
- (1) 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.

"Master Developer"		VISTANCIA, LLC, a Delaware limited liability company		
Address:	6720 N. Scottsdale Road Suite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770	By: Shea Homes Southwest, Inc., an Arizona corporation, its Member		
	Facsimile: (480) 905-1419	Ву:		
	and required copy to 8800 N. Gainey Center Drive	Its:		
	Suite 370 Scottsdale, AZ 85258 Phone: (480) 367-7600	By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member		
	Facsimile: (480) 367-2841	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		
Address:	20401 N. 29th Avenue Phoenix, AZ 85719	Ryr		

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

Ву:			
	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 <u>Schedule 2</u> 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.
- 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.
- 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.
- 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. <u>Comprehensive Liability</u>. 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. <u>Workers Compensation</u>. 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. <u>Automobile Liability</u>. 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. <u>General Provisions.</u> 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

Thi	COMMERCIAL BUILDING SERVICE AGREEMENT ("Agreement") is entered into this	
	, 2005 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communication	
	behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 204	
	venue, Phoenix, AZ 85027, and Vistancia, LLC, a Delaware limited liability company ("Mas	
	located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253. Capitalized terms not otherw	
defined in the	s 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.
- "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.
- (0) "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.
- "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's (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 <u>Sections 9 and 10</u> 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 <u>Section 10</u>, 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.

- 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 <u>Section 11</u>.
- (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.
- 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.

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).

- Master Developer. Master Developer shall have the right to assign its right, title and interest (and (b) 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.
- Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other (c) 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.

- (I) 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.

VISTANC company	CIA, LLC, a Delaware limited liability	Coxcom Inc., a Delaware corporation, d/b/a Cox Communications Phoenix				
	corporation, its Member		J. Steven Rizley General Manager and VP			
Ariz	belt Pleasant Point Investors, L.L.C., an ona limited liability company, its Member Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner	Address:	20401North 29 th 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			
Address:	By:Curtis E. Smith, its Chief Operating Officer 6720 N. Scottsdale Road Suite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419					

and required copy to

Scottsdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

Suite 370

8800 N. Gainey Center Drive

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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

Ву:		
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:		
- , .	Τ.	
	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
- 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. <u>Comprehensive Liability</u>. 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. <u>Workers Compensation</u>. 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. <u>Automobile Liability</u>. 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. <u>General Provisions</u>. 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. NOV - 8 2005 ATTORNEYS AT LAW ONE EAST CAMELBACK SUITE 340 PHOENIX, ARIZONA 85012 TELEPHONE (602) 263-8993 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., 10 a Nevada corporation, 11 Plaintiff. Cause No. CV2005-010727 12 13 COX ARIZONA TELCOM, L.L.C. an Arizona limited liability company; PLAINTIFF'S NOTICE OF COXCOM, INC., A DELAWARE CORPORATION (FN), a Delaware corporation; COX COMMUNICATIONS, 14 DISMISSAL OF CERTAIN **DEFENDANTS WITH** 15 **PREJUDICE** INČ., a Delaware corporation; SHEA 16 SUNBELT PLEASANT POINT, L.L.C., a/k/a VISTANCIA L.L.C., a Delaware limited liability company; VISTANCIA 17 COMMUNICATIONS, L.L.C.; an Arizona 18 limited liability company; CITY OF PEORIA, an Arizona municipal corporation; 19 DEBRA STARK, in her official capacity as the Director of the Community Development 20 Department of the City of Peoria; JOHN DOES I-X; JANE DOES I-X; ABC CORPORATIONS I-X; and XYZ 21 PARTNERSHIPS or OTHER ENTITIES I-22 X: 23 Defendants. 24

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

H:\10013.DIR\ACCIPITER\notice of dismissal w prejudice.wpd

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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 Willia Menles				
12	Martin A. Aronson William D. Cleaveland				
13	One East Camelback Road, Suite 340 Phoenix, AZ 85012-1648				
14	Attorneys for Plaintiff				
15	ORIGINAL of the foregoing filed with the Clerk of the Court and				
16	COPY hand-delivered this 8th day of November, 2005 to:				
17	The Honorable Pendleton Gaines				
18	Maricopa County Superior Court 201 West Jefferson Street Pharmy Arizona 25003				
19	Phoenix, Arizona 85003				
20	Lynda foguthieuxcs				
21					
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23					
24					
25					
26					

1 MORRILL & ARONSON, P.L.C. ATTORNEYS AT LAW 2 ONE EAST CAMELBACK SUITE 340 NOV - 8 2005 3 PHOENIX, ARIZONA 85012 TELEPHONE (602) 263-8993 4 Martin A. Aronson (009005) William D. Cleaveland (015000) 5 Attorneys for Plaintiff 6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 7 IN AND FOR THE COUNTY OF MARICOPA 8 9 ACCIPITER COMMUNICATIONS, INC., 10 a Nevada corporation, 11 Plaintiff. Cause No. CV2005-010727 12 13 COX ARIZONA TELCOM, L.L.C. an Arizona limited liability company; PLAINTIFF'S NOTICE OF COXCOM, INC., A DELAWARE CORPORATION (FN), a Delaware corporation; COX COMMUNICATIONS, 14 DISMISSAL OF CERTAIN **DEFENDANTS WITHOUT** 15 **PREJUDICE** INC., a Delaware corporation; SHEA SUNBELT PLEASANT POINT, L.L.C., 16 a/k/a VISTANCIA L.L.C., a Delaware limited liability company; VISTANCIA COMMUNICATIONS, L.L.C.; an Arizona 17 limited liability company; CITY OF 18 PEORIA, an Arizona municipal corporation; 19 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 20 21 PARTNERSHIPS or OTHER ENTITIES I-22 **X**; 23 Defendants. 24 Plaintiff, by and through undersigned counsel, pursuant to Rule 41(a)(1)(A), 25

Ariz.R.Civ.P., hereby submits this Notice of Dismissal without prejudice of only the following

26

H:\10013.DIR\ACCIPITER\notice of dismissal we prejudice.wpd

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 O Claules				
8	Martin A. Aronson William D. Cleaveland				
9	One East Camelback Road, Suite 340 Phoenix, AZ 85012-1648				
10	Attorneys for Plaintiff				
11	ORIGINAL of the foregoing filed with the Clerk of the Court and				
12	COPY hand-delivered this 8 th day of November , 2005 to:				
13	The Honorable Pendleton Gaines				
14	Maricopa County Superior Court 201 West Jefferson Street				
15	Phoenix, Arizona 85003				
16	Lynda Hogutkiewicz				
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BEFORE THE ARIZONA CORPORATION COMMISSION

<u>COMMISSIONERS</u>	
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,)

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

L.L.C., SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA

TELCOM, LLC

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 Movember, 2005.

MORRILL & ARONSON, P.L.C.

By Willein O Clember Comments

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:

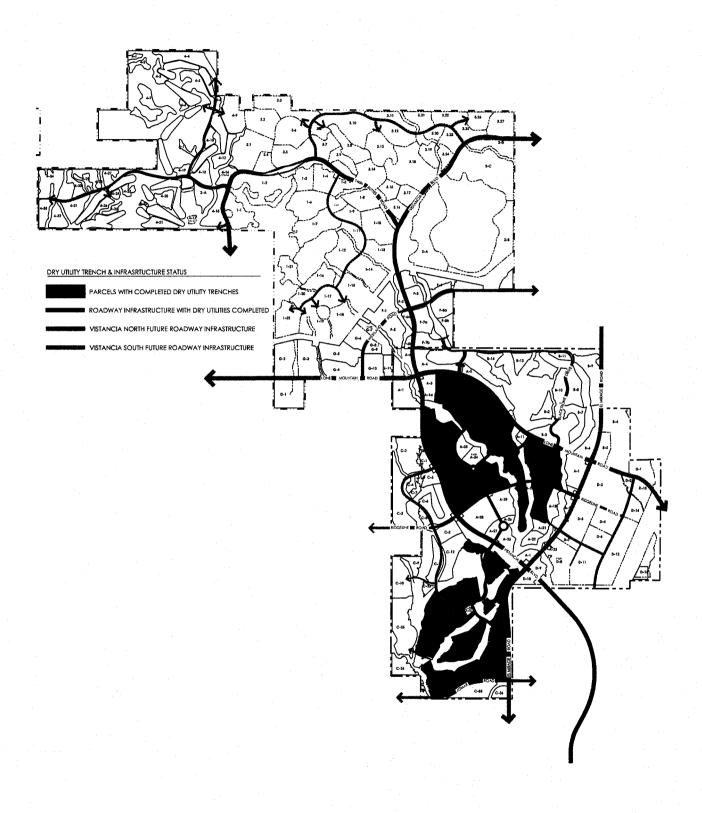
Michael W. Patten, Esq.
Roshka Heyman & DeWulf, P.L.C.
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, Arizona 85004
Attorneys for Cox Arizona Telcom, LLC

Michael M. Grant, Esq.
Gallagher & Kennedy, PA
2575 E. Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Shea and Vistancia Communications

Lynda Kogutkiewicz

ATTACHMENT

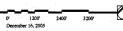
IJ-2





TRENCH CLOSURE MAP

As Of December 1, 2005



GREEY PICKETT

Community design

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BEFORE THE ARIZONA CORPORATION COMMISSION 1 2 **COMMISSIONERS** JEFF HATCH-MILLER - CHAIRMAN 3 WILLIAM A. MUNDELL 4 MARC SPITZER MIKE GLEASON 5 KRISTIN K. MAYES 6 7 DOCKET NO. T-03471A-05-0064 IN THE MATTER OF THE FORMAL COMPLAINT OF ACCIPITER 8 COMMUNICATIONS, INC., AGAINST VISTANCIA COMMUNICATIONS, L.L.C., 9 SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA TELCOM, LLC. 10 11 12 13 14 **DIRECT TESTIMONY** 15 **OF** 16 LINDA TRICKEY 17 ON BEHALF OF 18 COX ARIZONA TELCOM, L.L.C. 19 20 21 22 23 24 25 **April 5, 2006** 26 27

Q. Please state your name, address, and employment.

A. My name is Linda Trickey. I have been employed by Cox Communications, Inc. since about September 2002. My title is Senior Counsel. My business address is 1400 Lake Hearn Drive, Atlanta, Georgia.

Q. What is the purpose of your testimony?

A. This Commission has raised some questions regarding certain co-marketing, property access, and licensing agreements (the "Agreements")¹ entered into by Cox, Shea Sunbelt Pleasant Point, LLC ("Shea Sunbelt"), and/or Vistancia Communications, L.L.C. ("Vistancia Communications") relating to the Vistancia master planned community ("Vistancia") located in the City of Peoria. (Shea Sunbelt and Vistancia Communications will collectively be referred to as "Shea".) My testimony provides information regarding my communications with Shea's representatives relating to the contract documentation.

I. <u>SUMMARY OF TESTIMONY</u>

Q. Would you please summarize your testimony?

A. In the Fall of 2002, I provided in-house legal assistance to Cox personnel in Arizona to document a preferred provider arrangement between Cox and Shea relating to the Vistancia community. My testimony is intended to inform the Commission about my conversations with Shea's legal counsel during those negotiations. Although I would like to be able to inform the Commission about my communications with Cox personnel, I cannot do so because those communications are covered by the attorney-client privilege,

Specifically, the Agreements are: (1) Co-Marketing Agreement dated April 8, 2003 (the "Co-Marketing Agreement"); (2) Property Access Agreement dated April 8, 2003 (the "Property Access Agreement"); (3) Amended and Restated Co-Marketing Agreement dated September 25, 2003 (the "Restated Co-Marketing Agreement"); (4) 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.

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and disclosure of those communications would constitute waiver of the privilege. As a matter of policy, Cox does not waive the attorney-client privilege.

Shortly after I first arrived at Cox, I was assigned responsibility for assisting with the Vistancia contract documentation. I had not previously handled any real estate matters and did not have any experience with preferred provider agreements. My role was to review and possibly draft contract language; my role was not to negotiate the business deal. The latter role was handled by system personnel.

Starting in the Fall of 2002, I received drafts of the Vistancia agreements and engaged in communications with Shea's in-house counsel. I recall only generally that I reviewed residential and commercial draft agreements during the Fall of 2002. The agreements provided that Cox would build the extensive infrastructure necessary to provide telecommunications services to residential and commercial customers in Vistancia, that Shea would make a \$ 2 million capital contribution to Cox to help defray the substantial construction expenses, that Cox would have only non-exclusive access rights to easements in Vistancia, and that Shea would provide exclusive marketing of Cox's services in Vistancia in exchange for revenue sharing based on market penetration.

I recall that, at the end of 2002, I understood that the deal was fully negotiated and that the agreements were largely completed. However, in early 2003 I learned that Shea was proposing new draft agreements, and I had several communications with Shea's in-house counsel, Lesa Storey, about the new agreements. I understood that Lesa was an experienced real estate lawyer. She always presented herself as forthcoming with me about the terms of the deal.

Based on my communications with Lesa, I understood that Shea wanted to obtain from the City of Peoria what was called a multi-use easement ("MUE"). I understood from Lesa that a MUE would allow Shea's access entity to control access to Vistancia and that MUEs are new to Arizona but are legally used in other parts of the country. I recall generally that the new agreements drafted by Shea added and revised language of the original draft agreements. I recall understanding from Lesa that Shea believed the changes were necessary to effectuate its business intention of using the MUE structure. I also recall that the new agreements expressly provided only for non-exclusive access by Cox to Vistancia.

One of the changes that Shea made in the new agreements was to add a section regarding "most favored nation" rights. I recall that I was uncertain as to what Shea intended by this language and asked Lesa for clarification. I recall generally that Lesa explained that this language imposed no real obligation on Cox and served to afford a competitively level playing field, and I understood that it was one of the ways Shea had determined to use its MUE. In addition, I believe that Lesa or one of the developer's representatives communicated that the terms of the revised agreements would not change the substance of the preferred provider arrangement that Cox had already negotiated with Shea relating to Vistancia.

Although I know that I had other communications with Lesa during the contract negotiations, I do not recall many details about those communications. I recall only generally that Lesa explained that the purpose of the restated agreements was to provide record notice of the access requirements for Vistancia and that Shea needed to structure the deal as reflected in the restated agreements and the licensing agreements in order to effectuate Shea's business purposes. As stated, I recall having received assurances from Lesa that the MUE arrangement has been used legally in other locations.

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I recall understanding from my conversations with Lesa in the Fall of 2003 that a company called Accipiter, with which I was not familiar at the time, might challenge Shea's use of the MUE structure. It is not at all surprising or cause for concern that a property-rights structure being used for the first time in Arizona might be challenged in court. Given that the MUE structure had been found to be legal in other parts of the country, as Lesa had assured me, it would seem to be a business decision for Shea to make as to whether it wanted to defend the MUE property-rights structure in court. I recall understanding from Lesa that Shea wanted to pursue the MUE structure as a business matter.

I do not recall having any communications with Lesa, or with anyone else associated with Shea or with any Shea entity, discussing that the Vistancia contracts would prevent or restrict competition within the Vistancia community. I believe that I would recall any such discussions, and believe that no such discussions occurred. It is my understanding that Cox does not enter into contracts unless they provide for non-exclusive access rights.

II. TESTIMONY REGARDING NEGOTIATIONS WITH SHEA

Q. Please briefly describe your work history.

A. I began practicing law in 1989 working as a litigation associate in a Dallas law firm. In 1992, I joined GTE as in-house counsel. For the first few years, I primarily handled employment litigation. In about 1995, I transitioned to handling legal work for operations. In about September 2002, I joined Cox Communications in Atlanta. My title at the time was Corporate Counsel.

Q. When did you first become involved with Vistancia?

A. Shortly after I arrived at Cox, I was assigned with the task of assisting in contract documentation for Vistancia. I was not familiar with real estate matters or with preferred provider agreements.

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Q.	Please explain what you recall about your involvement	nt with	contract d	ocumentation
	for Vistancia during the fall of 2002.			

A. Shortly after I joined the project, I had communications with Tisha Christle and other Cox personnel in Phoenix who were working on the Vistancia deal. Although I would like to be able to discuss those communications, I cannot do so without waiving the attorneyclient privilege relating to the subject matter of those communications. Cox has a policy of not waiving its attorney/client privilege.

I can, however, discuss my communications with Shea representatives. For the most part, my communications with Shea were with Shea's in-house counsel, Lesa Storey. I believe that some of those conversations with Lesa also included Shea business representatives, but do not recall anything about comments from those representatives.

Although I do not recall the details of my conversations with Lesa during the Fall of 2002, I understood from things that she said that she was very experienced in real estate matters. I was very new to real estate matters, and recall that Lesa presented herself as very forthcoming about the contract terms.

I recall that we exchanged drafts of the residential and commercial agreements during the Fall of 2002. Those drafts are reflected in attachments LT-7 through LT-10. I recall understanding that Shea would pay Cox a \$2 million capital contribution toward the cost of installing the telecommunications infrastructure at Vistancia. I understood that Cox had not previously requested such a large capital contribution from a developer before but that the capital contribution was necessary given the enormous expenses that Cox would have to incur in building the infrastructure to support services to such a remote location.

Other than this provision for a capital contribution, however, I recall understanding that the draft contracts were largely patterned after typical preferred provider agreements that Cox

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had done elsewhere. As part of the terms of these draft agreements, Shea would provide exclusive marketing of Cox's services in Vistancia in exchange for revenue sharing based on penetration rates of the Cox services. I recall that Cox had originally provided for revenue sharing in the draft residential agreement but not in the draft commercial agreement, that Shea wanted revenue sharing in the commercial agreement, and that Cox made changes to the draft commercial agreement to incorporate revenue sharing. I recall that Shea also wanted to make changes to the draft agreements to provide for the recording of easement rights and that we waited for Shea to provide the language. I recall that, with the exception of the recording language that Shea was to provide, the drafts of the agreements were nearly completed by December 2002.

During the entire time that Cox was negotiating the Vistancia contracts with Shea, I understood that there was nothing unusual or out of the ordinary regarding the preferred Indeed, it is my understanding today that these initial draft provider arrangement. agreements, drafted largely by Cox in the Fall of 2002, are not in any way anticompetitive; they gave Cox only non-exclusive access to Vistancia, provided for a capital contribution from Shea, and provided for revenue sharing to Shea in exchange for preferred marketing services by Shea.

Q. Without disclosing privileged communications, please explain when and how you learned that Shea wanted to revise the draft contracts?

With respect to non-privileged communications, I recall only generally that I received and A. reviewed revised drafts that Shea had prepared. I generally recall discussing with Lesa Storey that Shea wanted to revise the contracts to provide for the use of an MUE. I was not familiar with an MUE at all. I recall that Lesa explained that MUEs are being used legally elsewhere in the country to allow the developer to control access to private easements, particularly in large mixed use communities such as Vistancia.

Because the conversations occurred several years ago and I have been involved in many other contract matters on behalf of Cox since then, I cannot in my mind distinguish the different conversations that I had with Lesa. I recall at one point questioning why Shea wanted to use a separate entity as the access provider, and I believe that I spoke with Lesa about this. I cannot recall what Lesa communicated to me about this issue.

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I also generally recall that in early 2003 I reviewed and revised the new draft agreements prepared by Shea. These agreements are attached to my testimony as LT-11. These revised agreements contained a provision for "most favored nation" rights. I generally recall not understanding this new provision and asking for clarification from Lesa. Lesa communicated in a memorandum to me that the provision imposed no real obligation on Cox and was intended to assure a competitive playing field. The memorandum that I received from Lesa is attached to my testimony as LT-12. I may have had a conversation with Lesa about this as well, but, after receiving her assurances, I do not believe that I had any further conversations with Lesa about the "most favored nation" provision. I recall that we proposed some changes to Shea's drafts, including deletion of the term "most favored nation." I do not recall why we deleted the term "most favored nation," but it was probably just a stylistic revision. The red-line drafts that we provided to Shea are attached as LT-13 and LT-14 to my testimony.

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Although I believe that there were probably communications about other revisions that Shea may have proposed in the new agreements, these are the only communications with Lesa that I can recall relating to what became the Co-Marketing Agreement and Property Access Agreement that were effective in April of 2003. I do recall from my conversations with Lesa, however, that I was assured that the MUE structure was legal and that the revised agreements did not change the substantive or financial terms of the arrangement that Shea had previously negotiated with Cox. Given these assurances from Lesa, it was

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reasonable to allow Shea to revise the agreements in the way that they determined was necessary to effectuate their business decision to use the MUE structure.

The final residential and commercial agreements were executed effective April 8, 2003, and are attached as LT-1 and LT-2 to my testimony. As I recall, I understood that Shea would pay Cox the sum of \$3 million in capital contribution toward the cost of installing infrastructure for telephone services. I also understood that, in exchange for Shea offering preferred marketing services, Cox would pay Shea \$1 million and specified revenue sharing. It was my understanding from my communications with Lesa that Shea wanted to structure the agreements in this way for its own business purposes. understanding that these final agreements provided for non-exclusive access by Cox to Vistancia.

Q. Do you recall having any further communications with Lesa Storey during the summer or fall of 2003?

A. I do not recall specifically when the next set of communications occurred between Lesa and me. Emails from Lesa to me during mid-2003 indicate that Lesa provided me with drafts of the "CSER" (which I understood was another name for the MUE), the licensing agreements, and amendments to the residential and commercial agreements. These emails are attached as LT-15 through LT-18 to my testimony. It was my understanding from Lesa that these new documents were necessary to reflect the anticipated grant of the MUE by the City of Peoria. Whether Shea received an MUE from the City of Peoria, and what rights the MUE afforded to Shea, were business matters for Shea, not Cox.

Neither anyone at the system nor I had any role in Shea's dealings with the City of Peoria regarding the MUE. I eventually understood that Shea did receive an MUE from the City of Peoria in the summer of 2003. I recall only generally that I received another set of draft

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agreements from Shea in the Fall of 2003, as reflected in LT-19, and I engaged in communications with Lesa about these drafts, as reflected in documents attached as LT-20 through LT-27. I do not recall the details of any of these communications with Lesa. I do recall understanding from Lesa that the purpose of the restated agreements was to reflect the grant of the MUE by the City of Peoria and to provide record notice of the access requirements for Vistancia, and that Shea needed to structure the deal as reflected in the restated agreements in order to effectuate Shea's business purposes. As I have already stated, I recall having received assurances from Lesa that this type of MUE arrangement. though new to Arizona, has been used legally in other locations and that the restated agreements would not change the substance or the financial terms of the original arrangement that had been negotiated by Cox and Shea in the Fall of 2002.

As reflected in the emails attached as LT-20 through LT-21, I had communications with Lesa about the fact that Shea wanted to rearrange the agreements to put Cox's payments to Shea into the licensing agreements. As reflected in the emails, Lesa informed me that Shea's litigation counsel wanted to make the changes to assure "the best possible structure to withstand potential litigation by Accipiter." I was not familiar with Accipiter, but Lesa explained that Accipiter was a small phone company serving the area and was threatening suit over the MUE arrangement. Shea wanted to be able to use Cox's outside legal counsel to defend any potential suit by Accipiter, and inquired whether Cox would allow the representation, as reflected in emails attached as LT-22 though LT-24. Lesa represented the potential litigation as simply regarding the "general enforceability of the [MUE] structure under Arizona and federal law," as is reflected in the email attached as LT-22. I do not recall the specifics of any conversation with Lesa about this matter. I believe, however, that Lesa did not communicate to me any reasons why the MUE structure that Shea had provided for in Vistancia posed any legal problems. Certainly, it would be understandable that, if MUEs had not previously been used in Arizona by developers, the

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MUE might raise property law issues that would face litigation, and it would be Shea's business decision as to whether to proceed in light of such litigation. At any rate, I am certain that Lesa and I did not discuss whether there was any potential for anti-trust claims as a result of the MUE arrangement instituted by Shea. Again, Lesa had always indicated that the MUE structure was found to be legal in other parts of the country, and we never discussed anti-trust issues.

I also recall that the draft licensing agreements contained overly broad indemnification language that would have required Cox to indemnify Shea in almost any situation where Shea was sued by a third party. I recall informing Lesa that Cox would need to revise the language. I proposed inserting language to the effect that Cox would provide the requested indemnification only for liability to which Shea would become subject "as a result of any failure by Licensee [Cox] to satisfy its obligations" I recall that Lesa readily agreed to Again, Lesa and I had no discussions about anti-trust issues, and this this revision. language had nothing to do with any concerns about anti-trust litigation.

Although I may have had other conversations with Lesa during the contract negotiations, I do not recall many details about those conversations. The final restated agreements and licensing agreements are attached as LT-3, LT-4, LT-3, and LT-6 to my testimony.

I do not recall any discussions with Lesa, or anyone else associated with Shea or with any Shea entity, discussing that the Vistancia contracts would prevent or restrict competition within the Vistancia community. I believe that I would recall any such discussions, and believe that no such discussions occurred. It is my understanding that Cox does not enter into contracts unless they provide for non-exclusive access rights.

- Q. Since 2003, have you had any communications with Lesa Storey or any other Shea representative regarding Vistancia or the MUE?
- A. Not that I recall.

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Does this end your testimony? Q.

Yes, it does. A.

BEFORE THE ARIZONA CORPORATION COMMISSION

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3	3	WILLIAM A. MUNDELL MARC SPITZER
\	4	MIKE GLEASON KRISTIN K. MAYES
	5	KRISTIIV K. MATES
i i	6) IN THE MATTER OF THE FORMAL DOCKET NO. T-03471A-05-0064
	7	COMPLAINT OF ACCIPITER)
,	8	COMMUNICATIONS, INC., AGAINST VISTANCIA COMMUNICATIONS, L.L.C.,)
	9	VISTANCIA COMMUNICATIONS, L.L.C.,) SHEA SUNBELT PLEASANT POINT, L.L.C.,) AND COX ARIZONA TELCOM, LLC.)
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	27	April 5, 2006

LT-1

Shea Sunbelt Pleasant Point, LLC & COXCOM, INC. CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT ("CMA") is entered into this B day of Mill 2003 between COXCOM, INC., a Delavare corporation d'b/a COX COMMUNICATIONS PHOENIX (bereinafter "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 "CSFR"). 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.

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- 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.
- 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 bereinafter 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

- 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.

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- (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.
- (t) "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 <u>Recital E</u> 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 moderns, 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 is 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 <u>Exhibit C</u> 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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- (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-Exchasive 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 <u>Exhibit D</u>, that enable Communication Services to be properly delivered to Cox Customer Premises <u>Equipment</u>.
- (2) "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, liber, wires, cable, pipes, sleeves, pads, cross connect panels, liber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, liber 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, ciscumstances 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 stildes, 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

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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 baving 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.
- (bh) "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 unital 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 <u>Recital E</u>). 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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- (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 defineate 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 Licease is to provide Cox with physically continuing essements, liceases 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, (1) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations bereunder 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
- (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 <u>subsection 6(b)</u>, the language regarding compliance with Pre-Wire Specifications set forth in item (b) of <u>Eabibit A</u>; 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 <u>Exhibit A</u>, 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 excrow 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 <u>subsection 3(c)</u>.
- (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.

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 Not100 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 <u>subsection 4(2)</u> and the exclusive rights granted to Cox under <u>Section 5</u>) 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 <u>subsection 6(b)</u>) and Master Developer. Without funding the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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 wote 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 excrows 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 Ec
 - (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 connectially 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 Teleom, 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 limital 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 <u>Exhibit</u> <u>B</u> for those phases or postions of the Development in which Cox receives the access rights and interests contemplated under <u>Section 3</u> 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 (fimited, 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 Con'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.
- (t) 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 Costomer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or bookup 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.

- (i) 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.
- (n) 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 bereby 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 <u>Exhibit A</u> in certain purchase agreements and option agreements as provided in <u>subsection 6(b)</u> 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 bone by a Neighborhood Builder, and (B) all obligations of Master Developer under this <u>subsection (ii)</u> relating to model homes of each Neighborhood Builder to whom it selfs any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of <u>Exhibit A</u> 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 <u>Exhibit G</u> (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 <u>Exhibit G</u> (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 <u>Exhibit C</u>.
- (c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in <u>Exhibit G</u>, 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 ampaid 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 lifteenth day of each month a report of the identity of all buyers who have closed excrow 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 Andit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to andit 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 andits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All andits 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 Pacifities 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 <u>Exhibit B</u> 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 Tenn 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 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 excrow 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 Master Developer under this CMA.
 - (c) Cooperation in Use of Technology Rasements 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 crected for the purpose of displaying Cox marketing materials, as required of Masier 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 shalf not be obligated, except as provided for in this <u>subsection 6(e)</u>, 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 bereinafter referred to as "Additional Trenching"), then Cox shall reindurse 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 coarse 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 treach 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 treach 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 after 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.
- (I) 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

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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 bereby 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 bereunder 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 <u>Section 11</u> 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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- (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 <u>Section 12</u>, together with interest thereon from the date such amount was due until paid at the rate of 12% per amount.
- (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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (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 bereto 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.

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- (a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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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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 Planted 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 Licease; 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 Boilder 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 "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 expeditions 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 filled, there shall be no exparte 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 fafteen (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 expense 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 invisition.

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 <u>subsections (b) or (c)</u>.
- (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 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 assignce signs and delivers to Cox a document in which the assignce 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 bayer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peuria or other applicable governmental authority, or to any transferee of Cox's ficense (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 mail the assignee signs and delivers to Master Developer a document in which the assignee mes 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) Altorneys' 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 counterchains 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 count, referre 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 receipt as since 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 receipt 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.
- (i) 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, defead with counsel acceptable to the other party and hold hamless 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.
- (I) 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 becomider.
- (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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Developer Initial

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 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 suphistication 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 construct 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 secipient'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

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

SHEA SUNBELT PLEASANT POINT, LLC, 2

By: Shea Homes Southwest, Inc., an Arizona

Delaware limited liability company

corporation, its Member

liability limited partnership, its Manager

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

> Curtis E. Smith, its Chief Operating Officer

"Cox"

Address:

20401 N. 29th Avenue Phoenix, AZ 85719 COXCOM, INC., 2 Delaware emporation, d/b/a COX COMMUNICATIONS Phoenix

By.

Howard Tylerman
VP of Physicss Operations

Cox Initial

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Developer Initial Cut

"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 fimited liability company, its Manager

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

By:

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

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

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

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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 ADT 1 8 2003 with Coxcoss, Inc., a Delaware corporation d'bla Cox Communications Phoenix ("Cox") on blhalf 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:

- 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;
- 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;
- 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,
 - 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).
- Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property,
- 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 with distribution treaches to each residence constructed by Buyer on the Property.
- 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 Neighbarhood 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 Page 1

EXHIBIT B

Technology Facilities

Fechnology 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.
- 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 B Page I

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:

- 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 cobranded 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.
- 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 brochuses, 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.

Page 1

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents,
- 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
- (e) 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;
- (1) 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:
 - 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 Page 2

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 SE) 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 Page 1 EXHIBIT E

Technology & Service Standards

- 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 liceuse 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) Belicore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
- 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 moderns 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 Page 1

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- 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.
- 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.
- 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 F
Page 1

EXHIBIT C

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Marketing Compensation Schedule

Con will pay Master Developer the sum of Five Hundred Thousand and Not100 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 G Page 1

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Shea Sombelt Pleasant Point, LLC & COXCOM, INC. PROPERTY ACCESS AGREEMENT

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this day of Att., 2003 between Cox Com, Inc., a Delaware corporation db/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29" Avenue, 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, LLC, 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 bereinafter defined).
- 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.

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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 Emity and Cox agree as follows:

AGREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- "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) "Beilding 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 Buckbone Conduit or with other telecommunications facilities located within the right-of-way abuting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Buckbone 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, mohifamily 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 Asizona (the form of which shall be subject to review and approval by Cox as provided in <u>Recital D</u> 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) "Exchasive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

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- (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.
- (I) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maticopa County Recorder, as amended from time to lime, 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 Boildings 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 hornes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, sucharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (e) "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 <u>Recital D</u>), 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.
- (1) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, percel 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 Plot described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (5) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (1) "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/II interfaces, cabling interfaces, patch panels and cords, routers/bridgers, liber transceivers, test equipment,

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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 Developes or an Owner.

- (a) "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.
- "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 cruption, 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 probibiting 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 corrier 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
- (na) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized persuant 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.

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- (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 fifings contemplated by the Master Declaration and/or any Village Declaration), the fifing 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-Eaclusive 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 <u>Recital D</u>). The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the licease 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 unseasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - 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 defineation shall not crode or lessen the rights conveyed under the CSER or the Non-Euclusive 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 ensements, 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-continguous 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.

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- (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 fiable 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 <u>Exhibit C</u>.
 - (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 communicity by substantially similar providers of the services included in the term "Communication Services" hereader. 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

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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 Teleom, 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 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.
- (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.
 - 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, Con 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 wility 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 HYAC systems, and foundation sleeves.

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- (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 makes 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 fintures, 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 port or in whole, as provided in <u>Section 11</u>, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) Individual Substriber 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.
- 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;

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- (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 (sesidemial 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 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. 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 <u>Brailbit B</u> 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 Rthlibit A attached hereto in each purchase agreement or option agreement entered into by Muster Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner 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 Rthlibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Rthlibit 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 milize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

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- (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 treaching being hereinafter referred to as "Additional Trenching"), then Cox shall reisoburse 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, renant'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 Treach Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- 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 live 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 Pacilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective paties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction.

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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 loss 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, aoning 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:
 - Are owned by Cox without the right of any other person or party to remove or after the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set fouth 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 builted services at discounted rates, if allowed by law, or an offering of consideration to the puschaser/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.
- Payment Obligations. In consideration for marketing assistance and the other agreements of Master. Developer and the Access Emity 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 reuted 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.

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Penetration Percentage	Applicable Percentage
0% - 74%	0% of MRC
75% ~ 85%	3% of MRC
86% - 95 %	4% of MRC
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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 Proties 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 <u>Exhibit D</u>.
 - (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 reimborse 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.

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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 porty 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 tisk of 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 fieu 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, essements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Con for any claims, losses, saits, 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 fell 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 anthorized 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 inigation 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.

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- (vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provides 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 porty 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 berein 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

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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 frigation 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 <u>Section 11</u> 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 porty 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 <u>Section 12</u>, 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 core on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such core, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per amoun, 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 <u>Section 12</u>.
- (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

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actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of <u>Section 12</u>.

- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) CSER and Liceuse. 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 Liceuse (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 <u>Section 11</u> below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive Liceuse are independent of this Agreement (subject to the provisions of <u>Section 11</u> 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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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 thereol, 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 seasons 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

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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:
 - 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 uncered default): (A) the Noo-Exclusive License shall remain in effect with respect to, and Cox shall cominue 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 necordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the nights 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 nication 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 Emity shall have the right to eater 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 climinate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
 - (iii) Intronet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and

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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 proupt and expeditions resolution of disputes besender. 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:

- (n) 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 accessary 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 acgotizations, 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 expents 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 partles 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.

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(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 <u>subsections (b) or (c)</u>.
- (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 posits 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 Peonia or other applicable governmental authority; or to any transferce 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 Con'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 ellective date of the assignment.

16. Miscellaneous.

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- (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 bereunder).
- (b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursoant 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) Unemforceability. 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.
- (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 (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 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.

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- (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.
- (h) Brokerage. Each party to this Agreement represents and warrants that it has not dealt with any teal 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.
- (1) 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 ithistative 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 voless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "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 seview 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) Counter parts. 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

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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 difigures, and in no event less than that degree of case 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, 2 Delaware limited liability company

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

or All Maxies

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

> Ontis 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 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 Hearn Drive Atlanta, GA 30319 Atla: General Counsel

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

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

> By: Slica Homes Southwest, Inc., an Asizona corporation, its Member

By: Sombelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Метрег

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

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

> > > 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 commining 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 adventise. 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 marker 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 treaches 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 treaches to each Building constructed by Buyer on the Property. In the case of treaches 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 treaches;
- (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 Enhibit 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
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 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 case to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data moderns 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) Bellecre (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
- Security. Data moderns 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:

- 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.
- 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. <u>Automobile Liability.</u> Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such inturance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
- 4. <u>General Provisions.</u> 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) doys 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-3

Vistabcia, LLC & COXCOM, INC. AMENDED AND RESTATED CO-MARKETING AGREEMENT

This AMENDED AND RESTATED CO-MARKETING AGREEMENT ("CMA") is entered into this 25° day of September, 2003 between COXCOM, INC., a Delaware corporation d'hia COX COMMUNICATIONS PHOEMIX (hereinafter "Cox") on behalf of itself and its Affiliates (as bereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Vistancia, LLC, a Delaware limited liability comp any (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 bereinafter 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 Marieopa 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 nonrefundable capital contribution of \$3,000,000.00 the driver 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 molti-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.

- 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 firnited to, Communication Services.
- Whereas, the Access Entity agrees to grant Cox the Non-Euclusive License.
- 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 Developez, Access Entity and Cox agree as follows, and the Original CMA is hereby amended and restated in its entirety as bereinafter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superceded in its entirety by this CMA:

ACREEMENT

- 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 bereto 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.
- (b) "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.
- (i) "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.
- (I) "CSER" means the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Justicement No. 2003-0837106, official records of Maricopa County, Arizona, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Con-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 sel-top boxes, cable moderns, digital audio receivers, remote control devices and signal amplifiers.
- (a) "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 <u>Exhibit C</u> for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
- "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or cent whether detached or attached.
- (s) "MUEI" means that certain Multi-Use Exsenents 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.
- (a) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to stal property.

(v) "Home Owners Association" means each Village Association, and any other homeowners' or properly 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 arunded from time to time, which include rights of way for dedication to Peoria or other publical 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-huying 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-Erchusive Licrusse.
- (y) "Platted Easement Area" shall mean and refer to all of the easement areas designated as "M.U.E." or "Muhi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (2) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MF1Is as set forth in <u>Exhibit D</u> 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, fiberII interfaces, cabling interfaces, patch ponels 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 costnol 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 declarants voting control over such Home Owners Association will terminate.

- (ec) "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 mobility to fulfill a monetary obligation, as intervening act of God or public enemy, fire, burneaue, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eroption, 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, hitigation challenging the validity or caforceability of this CMA, change in law, regulation or policy prohibiting a yarty from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of whities, 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.
- (if) "Village Association" means each Village Association as defined in and formed pursuant to the Master Decharation and the applicable Village Declaration therefor.
- (gg) "Village Declaration" means each Village Declaration as defined in and recorded parsuant 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 tenew 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 Acress Rights.

(a) Development Process. As used berein, 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 thoroughfores, 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:
 - (a) 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 transferce 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 bereafter 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 nights 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-Euclasive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and defineate 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 crode 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 seach 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 bescunder and/or (ii) sequire Master Developes (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 milities, 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-Exchaine 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 <u>Exhibit A</u>: 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 eath SFR and MFU, as set forth in item (b) of <u>Exhibit A</u> and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) Post-CDIA Clustogs. As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrew to be sold as of the Agreement Date, Master Developer agrees to use its diffigent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in <u>subsection Me</u>).
- (e) Repair of Improvements. Cox shall promptly repair and sestore (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.
- 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 a 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 wact 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 ne 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 postion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Ethibit 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 sequired 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 poid to Cox three such installments in a total amount of \$2,250,000.00.

- (b) Puture Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u>; 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 twithin 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 <u>subsection 6(b)</u>) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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) Cax 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 Enlight 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.
 - (9) Service Standard & Upgrades. Cox shall opgrade the Cubic 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 mumbers, 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 Teleom, 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 with 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 Buildes 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 treaches (it being agreed that any additional treaching 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.
- (b) 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, roles 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 tenove 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.
- (i) 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 Cex 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 puschase of associated Customer Premises Equipment and installation or bookup 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.
- (I) 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 Boilder, any Home Owners Association, or Vistancia Maintenance Corporation hable 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 substriber 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 homebayer), and to a television provided by Master Developer in the information center;
 - (n) 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. Rachasive 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;
 - (B) 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 shalf 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 Tumover 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 whome 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 intranct 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 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 ficense 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 Stal(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 different manner, all in accordance with the Marketing & Promotion Program set forth in <u>Echibit C</u>.
- (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

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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 Beveloper. Master Developer shall cooperate and coordinate with Cax in the design, permitting, construction and installation of the Technology Facilities described in <u>Exhibit B</u> 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 Enhibit A attached bereto in each purchase agreement or option agreement entered into by Misster Developer and a Neighboshood 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 Rechnology Easements and Similar Use Right Areas. Master Developer shall enoperate 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 exected 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 <u>subsection 6(e)</u>, 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 not 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 nod drop cubles 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 installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder, is as applicable).

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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 Enhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through excrows 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 Developes 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 Con 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 Neighboshood 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 portice in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shalt 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:
 - Are owned by Cox without the right of any other person or party to remove or after the same;
 - (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.

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- (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 exclosive 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 <u>Exhibit F.</u>
 - (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 Developes shall reimborse 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 to 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 heretonder 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 warrands 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.

- (i) 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.
- (ii) 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 becomeder, prior to the Agreement Date.
- (b) By Cox. Cox hereby represents and warrants to Vistancia as follows:
 - (i) Organization and Anthority. 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 besein and therein.
 - (9) Doe 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.
 - (21) 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 bereby 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 coverants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a chain 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 hitigation with respect to such matters.

- (vi) Compliance with Lass. 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 doty 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 requirite 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 CDAA 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 wrinten notice asserting a claim that might reasonably be expected to materially impose 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 Emity 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.

19. Defank 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 <u>Section 11</u> 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 bereunder or under the Non-Exchaine 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.

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- (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 <u>Section 12</u>, 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 Defoult 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 <u>Section 12</u>.
- (c) 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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (b) 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 inducetly, 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 us 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 loitial Term as provided in <u>Section 2</u> or termination as permitted under <u>Section 18</u>, 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.

A REPORT OF LOTTE SERVICES.

- (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 Developes, to 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 tea (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 Con failed to firmely 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 uncored 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 Pluts that have been secorded as of the date of such expiration or termination, and (B) Cox may commune 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-Euclusive 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 Liceuse shall terminate with respect to, and unless otherwise required by applicable law or regulation. Cox shall have no further right to offer and provide anication 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 nonexclusive 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.
 - (i) 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) Con shall remove any and all of their other facilities, equipment, fornishings 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 Neighbothood 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
 - (ii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Pacifics 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 expeditions 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 impresolved dispute not provided for in my 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 exporte 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 delives 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 (3D) 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 seculved 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 <u>subsections (b) or (c).</u>

- (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 Con'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 cotity 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 mise after the effective date of the assignment
- (c) Cox. Cox may assign Cox's interest in this CMA and in any excernent, permit or other assurances of access granted to Cox bereunder or putawant 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 coasolidate; (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 transferre 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 assignce signs and delivers to Master Developer a document in which the assignce 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 beremder).
- (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 Liceuse), 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) Attoracys' Pers. In the event of any dispute or legal protecting (incloding jodicial 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

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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 arbitration 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 couries 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 factimile transmission shall be deemed delivered on the date of receipt as shown on the received factimile, and served by certified or registered mail or by reliable overnight couries 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 received or manifest of the U.S. Postal Service or such couries. 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 bereto toward, any person or entity not a party to this CMA.
- (i) Waiver. No waiver by any party of any night 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 decined 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.
- (i) 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 obliger 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 barroless 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.
- (I) 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 porsuant 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 Terra.
- (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 pharal, 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 subdivisious 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 includes and agreemental agencies, instrumentalities, 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 construct 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 his 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 construct 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 disclusive 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 Con'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 \$5253 Phone: (480) 905-0770 Facsimile: (480) 905-1419

and required copy to 8800 N. Gainey Center Drive

Suite 370

Scottsdale, AZ. 85258 Phone: (489) 367-7600

Facsimile: (480) 367-2841

VISTANCIA, LLC, a Debrace lumbed liability company

By: Shea Homes Southwest, Inc., an Arizona

corporation, its Member

BY ASTORED

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

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

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

> > > By Cutts Chr Corris E. Smith, its Chief

Operating Officer

"Сол"

Address:

2040) N. 29th Avenue. Phoenix, AZ 85719 COXCOM, INC., a Delawate corporation, db/a COX COMMUNICATIONS Phoenix

By:

General Manager and VP of Ducas Guillions

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ما يو للله و لوليان و من الرئيسية و لا يوان الرئم و المنظم الله

"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 Scottschle, AZ \$5258 Phone: (480) 367-7600 Facsimile: (480) 367-2841 VISTANCIA COMMUNICATIONS, L.L.C., 20 ARZONA finited liability company

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

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

By: Sanbelt Pleasant Point Investors, L.L.C., an

By: Sante it reason route investors, access, and Arizona limited liability company, its Member

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

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

> > By: Cutas Christ. R. Smith, it

Chicf

Operating Officer

Lender Consent:

The under signed 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

· VIKEAU

- 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 Coxcorn, Inc., a Delaware corporation db/a Cox Communications Phoenix ("Cox") on behalf of itself and its affidiated 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:

- (2) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(2) 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.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 A

Page 1

EXHIBIT B

Technology Facilities

Feehnology Facilities shall be designed and installed to meet the following minimum requirements:

Netwerk:

- 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 exclassively 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-loint 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 personeters 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.
- c) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality,
 of analog and digital cable programming.
- Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all
 network traffic and shall actively monitor for incorsions. Data moderns shall be compliant with all
 MCNS/DOCSIS standards and provide for data packet encryption.
- 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, Coz 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 decins appropriate, to meet the minimum service standards.

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EXHIBIT B Page 1

EXHIBITC

Cox Digital Community Marketing & Promotion Program

This Edibit 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 Coa in meeting and communicating with Neighborhood Buildess 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:

- 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
 to-branded with Cox and Master Developer trade names and trademarks.
- A minimum of one month advertising in a local homebuildes 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 cobranded with Cox and Master developer trade names in the
- Participation in any future "Eox 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 Page 1 and will include the "Coa 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) bightight 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 brockeres 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 éata, which shall include the Acceptable Use Policy, and description of all services in each excrow 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;
- (1) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party towns (excluding towns for owners, agents and promoters of other master planned communities in Proria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tope, 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 minary 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;
 - 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 Buildets;
 - (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.

EXHIBIT C Page 2 (7) provide notice of pending escrow closings

EXHIBIT C Page 3

EXCHIBIT 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 SE). 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 ron 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 empiraction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6

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 coasial cables.

The cable ron 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 Page 1

EXCHIBIT E

Technology & Service Standards

- Standards. Con 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
 - (c) Data Network Standards.
- Security. Cox will exercise reasonable case 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 t. 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 enstoner-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 planted outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities to refer affected customers of such outages and will advise Master Developer of such planted outages no less than 24 hours in advance of the service outage.

EXHIBIT E

Page 1

EXHIBIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- Comprehensive Linbility. 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
 (12,000,000) per occurrence.
- 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. <u>Automobile Liability</u>. 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 bereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

EXHIBIT P

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LT-4

Vistancia, LLC & COXCOM, INC.

AMENDED AND RESTATED PROPERTY ACCESS ACREEMENT

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, LLC, an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in <u>Appendix A</u> attacked to the CSER and incorporated therein by reference, which <u>Appendix A</u> is incorporated into this Agreement by reference.

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Emity 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 Amercation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instruments 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).
- Whereas Master Developer amicipates 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 hase 10, 2003 and recorded lane 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 Boildings 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.

1. 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 entitety as hereinafter set forth, it being agreed that the Original PAA 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) "Access Emity" 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.
- (2) "CSER" means the Common Services Ensements 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 moderns, digital audio receivers, remote control devices and signal amphifiers.

- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (9) "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 Indomnity 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.
- (e) "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-Exchasive License. A Plat described in the preceding item is sometimes bereafter 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.
- (1) "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/II interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transcrivers, 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.

- (n) "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 cruption, 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 earlier 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 Dechration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (22) "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 not 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.
 - 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 defineation shall not crode 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 exerments, liceuses 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, perpenual, 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-continguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional essements or access rights referenced in the immediately preceding sentence, Con 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 reimborse 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 Essement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exchisive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may cocuist with Cox in the Platted Easement Areas; and, further, that the Non-Exchisive 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 assing 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 fature technology comprising all or part of the Communication Services as it becomes available) to Owners, termints 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 it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all eachsive 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 <u>Exhibit C</u>.
 - (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 communication 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. Con 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 Con'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 Coa'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 occupantly (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.

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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 tirrely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- 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 Coathe 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.

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- (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 intranct home page or any advertising on the 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).
- Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, **(d)** 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 4.93 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 <u>Exhibit B</u> 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 highle 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

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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, lenant 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.

- Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master (c) 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 excrows 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 Con 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 telecomraunications 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 berein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for nology 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 Coa 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. Con makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Con represents and warrants that the Technology Facilities installed by Con:
 - (i) Are owned by Cox without the right of any other person or party to remove or after 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 purchased/developer in eachange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchased/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchased/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 <u>Exhibit D</u>.
 - (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 <u>subsection (a)</u>, 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 <u>subsections (b) and (c)</u> above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to climinate 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 <u>subsections (b) and (c)</u>.
- (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 contemptated 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 coverants 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 Coa'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 doly 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 faws 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 duty 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 Constict. 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 <u>Section 11</u> 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 <u>Section 12</u>, 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 therefor 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) Con 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 <u>Section 12</u>.

- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cax, 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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 18</u>.
- (b) No Consequential Damages. The defaulting party shall have no fiability 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 <u>Section 11</u> below); the parties hereto representing and arknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of <u>Section 10(a)</u> above and <u>Section 11</u> 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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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.
 - Master Developer Determination. If Master Developer determines that Cox has failed (ii) 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 seasons 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 imitate 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 fist of toresolved 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:
 - 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-Euclusive 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 Developes 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 funitation;
 - (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, firmishings 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 decays 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, formishings 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 climinate, 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.

12. Dispute Resolution Blechanisms.

The parties have agreed on the following mechanisms in order to obtain psompt 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.
- Information. A Mediator shall promptly determine if all parties are in possession of adequate **(b)** 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 ther 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)
- 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% on 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.
- (1) 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 Province other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to costomers in Provia, 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 casements 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 disbutsements (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.
- (b) 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.

- (i) Writing Required. No act, delay or omission done, suffered or permitted by one party to this Agreement shall be decined to waive, exhaust or impair any night, remedy or power of such party hereunder, or to relieve the their 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 costom 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.
- (h) 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.
- (f) 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.
- (a) Meaning of Certain Terms. When the context so equires 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 "persoo" includes individuals, entities and governmental authorities. The words "governmental and "governmental authority" are intended to be construed broadly and include governmental and quasigovernmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed to easily and includes all statutes, regulations, relings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a count, administrative body or arbitrator.
- (e) 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 displication, 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 repundaction 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 vessions. 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 property 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 secord 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

r. Alker

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

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

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

By: Land Courts E. Smith, its Chief Operating Officer

Address:

6720 N. Scousdale Road Suite 160 Scousdale, 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: 20401North 29th Average

Phoenix, AZ 85027 Phone: (623) 322-7137 Facsimile: (623) 322-7918

and required copy to 1400 Lake Heam 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 Delawar	e limited liability
company	

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

By:			
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	it:		

By: Sombelt Pleasant Point Investors, L.L.C., an Arizona limited frability company, its Member

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

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

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

Address:

6720 N. Scottsdale Road Suite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimite: (480) 905-1419

8800 N. Gainey Center Drive Suite 370 Scottsdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

and required copy to

Coxcom luc., a Delaware corporation d/b/a Cox Communications Phoenix

By:

T. Steven Riched Handle Til CRAPA ... General Mongrey and VP of Burning perilies

Address: 20401North 29 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 VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

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

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

By.

hs:

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

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

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

> > > By:

Curtis E. Smith, its Chief Operating Officer

Address:

6729 N. Scottsdale Road Suite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419

and required copy to 8809 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 Delawate corporation

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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/bfa 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. Boyer 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 Selter purmant 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 frum 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 solumit 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 toute and specifications provided by the APS plans therefor, and (ii) the building steeves 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
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Asizona.
- 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.
- 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) Belicore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
- Security. Data moderns 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 periods 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 subscribes 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:

- 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.
- 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 endossement in
 favor of the other party.
- 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. <u>General Provisions.</u> 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 ratisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance overage 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

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 <u>Appendix A</u> 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 <u>Appendix A</u> 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

<u>Section 1.01</u> 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 <u>Schedule 1.01</u> 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 1.93 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,

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Non-Exclusive License Agreement Page 1 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

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 grantedshall 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 "nm 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 fluid 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 aixing 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 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 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, telecopy 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.

<u>Section 6.03</u> <u>Delivery Information</u>. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

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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.

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Schedule: 1.01 Other Easements or Licenses 3.01 License Fees

Operating Officer

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IM-333619-1 Copyright © 2000, 2001 Krieg Devault Alexander & Capehart, U.L.P.

Non-Exclusive License Agreement Page 6 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.

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

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

> Curtis E. Smith, its Chief Operating Officer

Schedule:

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1.01 Other Easements or Licenses

3.01 License Fees

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Non-Exclusive License Agreement Page 6

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 Simbelt Pleasant Point, LLC, a Delaware limited liability company), for the benefit of the undersigned, the undersigned hereby consents to the foregoing Non-Exchasive Licease 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: His: DREGOR

STATE OF Country of Los augeles 55.

On this 5 day of <u>Docember</u> 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared <u>Robert J. Marchans</u>, personally known to me (exproved to me on the hasis 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 scal.

SONA E. GARCIA
Commission # 1410605
Notary Puber: California
Los Angeles County
My Comm. Expires May 9, 2007

Monia E. Gascie. Notary Public

APPENDIX A

Definitions and Interpretations

ARTICLE 1 - 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).

<u>Section 1.03</u> <u>Association.</u> 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.

<u>Section 1.06</u> <u>Combined Easement Area.</u> 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.

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 Grantce (with the terms "Grantor" and "Grantec" 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 Lasements 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 ASupplement 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 Aat 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" hercunder (which real property shall be designated in an "Exhibit B-Supplement" included in 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 creet 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 <u>Telephone Services (long distance)</u>. 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 <u>Visible From Neighboring Property</u>. 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.

<u>Section 1.40</u> <u>Vistancia Maintenance Corporation</u>. 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.

<u>Section 2.04</u> Waiver. No delay or failure by any Party in exercising any rights under any agreement which incorporates this <u>Appendix A</u> and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

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 <u>Appendix A</u> 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 <u>Appendix A</u>, together with all incorporated reference in such agreement and this <u>Appendix A</u> as a whole, and not to any particular, article, section, paragraph or other provision of any specific document:

<u>Section 2.07</u> <u>Multiple Counterparts.</u> Any agreement which incorporates this <u>Appendix A</u> 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 <u>Drafter of the Agreement.</u> For purposes of construing any agreement which incorporates this <u>Appendix A</u>, 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 <u>Appendix A</u>, or of this <u>Appendix A</u> or any amendments, schedules or exhibits thereto or hereto.

<u>Section 2.12</u> <u>Successors.</u> Any agreement which incorporates this <u>Appendix A</u> 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.

20040212876

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:

Eicensee'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.

Penetration Percentage	Applicable License Fee
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

IM-333619-1 Copyright Q 2000, 2001 Krieg DeVault Alexander & Capehart, L.L.P. Non-Exclusive License Agreement 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 License 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 <u>Schedule 3.01</u> shall have the meaning attributed to such term in the PAA.

LT-6

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

2/2

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20040212877 03/02/2004 13:54
ELECTRONIC RECORDING

301-13-2-2-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 296 Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the <u>Appendix A</u> 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 <u>Appendix A</u> is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECYTALS

<u>Section 1.01</u> 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 <u>Schedule 1.01</u> 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 htly 23,

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Non-Exclusive License Agreement Page 1 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.

<u>Section 1.04</u> 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 Licenser 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

Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Section 2.01 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

IM-333619-1 COPYRIGHT O 2000, 2001 KRIEG DEVAULT ALEXANDER & CAPPHART, L.L.P. Non-Exclusive License Agreement Page 2 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

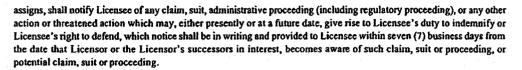
Section 3.01 License Fee. In consideration of the license granted hereunder, Licensee agrees to pay to Licenser a fee (the "License Fee") calculated in accordance with <u>Schedule 3.01</u> attached hereto, which License Fee shall be payable in accordance with the terms of said <u>Schedule 3.01</u>.

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 ckin 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



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 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 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, telecopy 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.

<u>Section 6.03</u> <u>Delivery Information</u>. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

<u>Section 6.04</u> <u>Change of Address.</u> 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.

LICENSEE

By:

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

COMMUNICATIONS PHOENIX

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:

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 Pattner

> Curtis E. Smith, its Chief Operating Officer

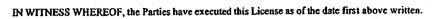
Schedules:

1.01 Other Easements or Licenses

3.01 License Fees

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LICENSEE LICENSOR COXCOM, INC., a Delaware corporation d/b/a/ COX VISTANCIA COMMUNICATIONS, L.L.C., an Arizona COMMUNICATIONS PHOENIX limited liability company By: Vistancia, LLC, a Delaware limited liability company, its Manager By: Its: By: Shea Homes Southwest, Inc., an Arizona corporation, its Member 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

1.01 Other

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

General Partner

Other Easements or Licenses

3.01 License Fees

Curtis E. Smith, its Chief Operating Officer

STATE OF AR	IZONA)							
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County of Mar	icopa)							
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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, LL.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: This: DIRECTOR

STATE OF California,
County of Los Augeles 3ss.

On this 5 day of December, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Notest Alastectory, personally known to me (expreved 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.

SONA E. GARCIA
Commission # 1410606
Notary Public - California
Los Angeles County
My Comm. Expires May 9, 2007

Jonia E. Jascia. _
Notary Public

APPENDIX A

Definitions and Interpretations

ARTICLE 1 - 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.

<u>Section 1.04</u> <u>Cable Television Services</u>. 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.

<u>Section 1.05</u> <u>Combined Easement.</u> The term or phrase "Combined Easement" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

<u>Section 1.06</u> <u>Combined Easement Area</u>. 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 tiasements 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 salc, 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 Intranct 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 creet 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.

<u>Section 1.33</u> <u>Service Easement.</u> 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 <u>Section 2.02</u> 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.

<u>Section 1.36</u> <u>Telephone Services (long distance)</u>. 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.

<u>Section 2.04</u> Waiver. No delay or failure by any Party in exercising any rights under any agreement which incorporates this <u>Appendix A</u>, and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

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, 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 <u>Appendix A</u> 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 <u>Appendix A</u>, together with all incorporated reference in such agreement and this <u>Appendix A</u> 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	Payou
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

IM-333619-1 COPYRIGHT O 2000, 2001 KRIEG DEVAULT ALEXANDER & CAPEDART, L.L.P.

Non-Exclusive License Agreement such term in the CMA.

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Non-Exclusive License Agreement

LT-7

From: | Curt Smith [csmith@sumbeltholdings;com] | Sent: | Tuesday, November 12, 2002 5:53 PM | Arthurs, Tisha (CCI-Phoenix)

Mark Hammons Cc: Subject: RE: redines



cox final recline.doc

I was able to creat the redline I needed. It is attached.

Thanks for trying.

----Original Message----

From: Arthurs: Tisha (CCI Phoenix) mailto Tisha Arthurs@cox.com

Tuesday, November 12, 2002 4:21 PM

To: **Curt Smith**

Mark Hammons Subject: redlines

Gentlemen,

I'm alraid there is not one document that incorporates at changes. Below are the redlines in order, to the best of my memory.

<<Shea Sunbelt Agreement redline send 1st 10-02.doc>> recitat D was amended to say phone to be included at first move in as well.

<<drait from legal send 3^d 10-15-02.doc>> Still does not define "common area" <<draft from legal send 4^b 10-30-02.doc>>

<<iinal redines.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 (623)322-7857

Shea/Sunbelt Holdings COYCOM INC CO-MARKETING AGREEMENT

affiliates, and Shea/Southelt Huddings, 6/1/2 Corpuszion, Defeted in der contentaf die following ban 1 basinatier Mester Developer."

RECITALS

by Peoria on of Progra, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as ame from time to time.

Defeted: Hericaps Courty.

Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services in facilities: the timely inspillation of such virtue, voice and data and will ray Cox a capital contribution of \$2,000,000,000 to deliver Services in the time of the first home owner occupancy in the mittal development Phase of Visitancia. About a Developers' provinces will be made to four court payments of \$500,000 at the beginning of each quarter beginning January 1, 2003.

... | Deseted: Services 1

Con has the Actal authority and technical experiese to install the Technology Facilities necessary to provide to Debeted Coming and the Vistancia the Technology Services

Con has the franchised right to provide CATV to the area of Proving that includes Vistancia under its License Dedeted: Manage County from Zerra, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Deleted Manistra Casar.

Telephone Service to Vistancia and such control will make the Adoptions service available to Single Family Residents, i.e.

Deletest in "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operati

Defeted: is

- E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to berein as "subdivision parteds").
- F. In order to provide for the orderly and oniform 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 excensess, 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 promission of extinology services (including during the Initial Tenn, the Technology Services).
- G. Whereas the Moster Developer further acress to grow to Cus an executed and access to the Premises by the installation of the Cus Positives and provision of Services.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable ration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows.

AGREEMENT

Definitions. The following terms shall have the following meanings for all purposes under this CMA:

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"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.

"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. "CATV" means cable television service, whether analog or digital, except where limited in a specific context. (c) "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. "Customer Premises Equipment" means Cox-owned, Jessed or for sale equipment installed within the enaborer's home to facilitate any of the Technology Services subscribed to, including but not limited to, convertey boxes, cable madens, digital audio receivers, remote control devices and signal amplifiers: 0 "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. (i) "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, Vistuacia. "Local Exchange Carrier" means the local telephone company, which can be eather a Bell operating company, e.g. m) Qwest, or an independent, which provides local telephone transmission service (a) "Marketing-Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.

"Marketing and Promotion Program" means the promotional and marketing services and other efforts described (o) 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. (q) "Master Developer" means Shran Smithek Pleasant Print L.L.C., an Arizona limited liability company Ordered: Poor's Village Company (q) amehal. "MDH" means residential haildings containing multiple dwelling units for lease or rent whether detached or

(s) "Neighborhood Builder" means any person or entity than orgaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development purel, a "super-pail" or planed

"Monotary Default" has the meaning set forth in subsection 10(a)(i)

lots, for the purpose of developing and construction of one or more SFRs thereon.

(1)

1. () "Official Records" means the official records of the City of People Arizona, pertaining to real property.

- "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenous, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easternents 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 necorded 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
- "Performance Default" has the meaning ser forth in subsection 10(a)(ii).
- (w) "Plat" means (i) a man of dedication or markivision olar recorded by Master Developes for the purpose, among (w) "Plat' means (i) a map of dedication or archivision plat recorded by Master Developes for the purpose, among other things, of creasing one or more legal residential 'superpads' or residential development parcels for sale to one or more Neighborhood Builders (each of which "superpads" or development parcels will be realize be further subdivided by the recordation, either by Master Developer on a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and eastencists), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoris or other political subdivision with juridiction over Vistancis 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 amerial streets). strees and rights of way established under Pht(s) previously recorded) for dedication to Pecria or other political subdivision with jurisdiction over Vistancia or the applicable ponion thereof. A Plan described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plan" and a Plan 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 maide wiring, outlets and trim in SFRs set forth
- "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Visioncia, enclusive only of construction fees, pop-per-view movies, installation fees, equipment lees, guide fees or any taxes, assessments or fees leveled by any governmental authority. If any Owners Association enters into a separate Dasic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- "SFR" means a single family detached or attached residence developed for sale, including a condomisium or townbouse
- "Vistancia" means the SFRs within the master planned community, being developed in Peters, Arizona, described in Deleted: Montaga County. ı (aa)

- (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, fibes, wires, cable, pipes, sleeves, pads, cross connect panels, liber/T1 interfaces, cabling interfaces, patch panels and conts, routers/bridgers, fiber transceivers, ten equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Promises equipment.
- (cc) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation magement of the content on the internet shell page for Vistancia-act

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(dd)	"Technology Services"	means the I	elephone service.	Internet Service,	CATV, and my	additional communications
sarvice	s delivered through the	Technology !	facilities that from	hime to time are	available from or	through Cox to residents at
Vistom	ria .	_				

(ee) "Felephone Service" means local relephone service with occess to told and long distance selephone international service provided by or drough a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(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 roting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hb) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a gurty'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 resalting flown such party's failure or inability to fulfall a monetary obligation, an intervening act of God or public enemy, fire, hurricance, storm, adverse weather conditions, floot, earthquake, epidemic, explanion, volcanic emption, lightning, nuclear radiation, earth stides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, powers surges, quaranties restriction, firight embargo, act of war (declared or undeclared), riot, public diseaved, civil disturbance, act or threa of terrorism, tabotage or criminal darange, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy problebing a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of trailines, camises or supplies of unique materials or equipment or materials or equipment having long delivery periods, interruption or casualty in the transportation 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 performence of an act that must be performed before the action that is delayed

(ii) "Common Ares" the area of the Frence in which markage, natural placement could include provided by Cox requires print appared of bigger 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 Review's 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 Agreewal Term then in effect, as applicable). The Initial Term and any Reviewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

Easements and Access Rights

(a) Master Plan Utility (Tochiology Facihites) Easements & Access Rights. During the application and processing by Master Developer of each Paced Plat during the Term of this CMA, it is contemplated that Master Developer will establish non-eachusive public utility easements (which shall include a non-exclusive right to place Technology Facihites within the easement area, in conjunction with other public utility providets) or other similar use rights in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including defineating on such Plat (or other instrument of record such 2s, by way of example and not of limitation, a tract dectaration) the easements and use rights provided for in this CMA, as follows:

(i) Technology Facilities-Master Developer. Non-exclusive public utility exsements, 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 exsement to construct, install, repair, reptace and maintain public utility systems and facilities including, but not limited to,

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telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vands, 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 either the construction and installation nor the repair, replacement and enumerance of the Technology Facilities shall unreasonably interfere with the use of the essential states of the construction and installation nor the repair, replacement and enumerance of the Technology Facilities shall unreasonably interfere with the use of the essential states of the essential states. development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

Right of Entry to Install Technology Facilities. During the Term of this CMA, within the period (ii) Right of Entry to Install Technology Facilities. Dating the cents on this Limits the control of the installation therein of the entry to Installation and City of Provis to all utilities and other users thereof for the installation therein of the entry permitted by City of provise or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the executions established and other use rights provided for in this CMA, at the sole cost and

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- (iii) Non-Exclusive License to Con. Con 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 Vistancia by Cos, at the sole cost and expense of Cox.
- (b) Subdivision Utility (Technology Facilities) Exsentents & Access Rights. During the application and processing of each SFR. Lot Plat during the Term of this COMA, it is contemptated that these will be established non-exclusive public utility exactments (which shall include a non-exclusive right to place Technology Facilities within the exsentent 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 vectord such as, by way of example and not of limitation, a tract declaration) the essements and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the essements and use rights provided for in this CMA are established, which exsements shall be delineated on such SFR Lot Plat (or other instrument of sectord such as, by way of example and not of limitation, a racel decharation), as follows:
- Technology Facilities-SFR. Non-exclusive public utility easements in such locations as Master per 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 currestruction, installation, repoir, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, limenet service and/or similar communications systems and facilities concising of underground wises, conduits, cables, visults 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:
 - (22) The SFRs shall have non-exclusive access to public easements and non-exclusive access to private easement
 - (bb) Neither the construction and installation now the repair, replacement and maintenance of such Technology Facilities shall emeasonably 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 (enterpt such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferrer 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 numer of such SFR
 - (60) Norwithstanding any other provision hereof, us no event shall any holder or heneficiary of such excernent have the right to enter (by virtue of the excernent reserved hereunder) into the interior of any SFR or any sinusture related thereto and located thereon without the prior consent of the then current owner

- (ii) Non-Exchange License to Cox. Cox shall have, for the Term of this CMA, a nonexchange license to use portions of the casements reserved pursuant to this subsection J(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 surved by (ox, at the sole cost and expense of Cox.
- (iii) Pre-Wire Specifications. Master Developer shall use in Just efforts to include in its contracts with Neighborhood Builders, as contemptated by subsection (6)), the language regarding compliance with Pas-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 in delete such item (h) firm 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 capense with the Pic-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the whimate responsibility and cost socuring 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 escrive to be sold as of the Agreement Date, Master Developer agrees to use its different good fisith 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 Builders.

- (c) License For logiess & Egress to Subdivision Parcets. 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 pancel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its differnt, good faith efforts to secure from the Neighborhood Builder a nonexclusive, intervotable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as nocessary for ingress and egress to any such subdivision parcel, in order to consume, install, replace, maintain and repair the Technology Facilities, at the sole-cost and expense of Cox.
- (d) Form of Essements. The easements and other use rights provided for under subsections 1(s), shall be in form and substance sufficient under Arizona law to non 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-sine or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the externest and other rights reserved for or granted to Cox necrosity this Section 1.
- 4 Technology Services & Technology Facilities Obligations of Con

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(a) Preterred Right to Offer Technology Services. During the Term of this CMA, Coa 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 Mohii Duretling Units, i.e. "MDUS" or MFUS at Vistancia, which preferred right shall apply only (i) within any routel 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 Coa's preferred lay with respect to any such common area tract shall terminate upon the Tumover Date for the Owners Association that owns such common area tract and 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 theredoper'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 Eshabit A in purchase agreement and option agreements as provided in subsection (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 does not all cannot all the interpretable in subsection (a) relating to model home office of each Neighborhood builder to whom is tells any portion of Vistancia shall be fully satisfied if Master Developer does not administely in the form of Exhibit A in its purchase agreement on option agreement as the full developer model home office of each Neighborhood builder to whom its purchase that the developer does have developer does all the full master developer does to the developer doe

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team to Consuper activations of the inscidence two (2) million dellars to be used by Cos for the cast of the inscidence of fielding for Cos to offer Technology Services as the justial phase of the Vistancia development. Cos 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 Muster Developers' payment will be made in four equal payments of \$500.(41),00 at the beginning of each quarter beginning humary 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 to common area tract within Vistantia owned by any such Owners Association, or (ii) any owner of any portion of Vistantia, other Association, the Common area tract within Vistantia owned by any such Owners Association, or (ii) any owner of any portion of Vistantia, other Association, interving the Particle Date for Sect Owners Association, or (ii) any owner of any portion of Assample, outhan any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the entent provided in
subsection 6(b)) and Master Developer. Without firming the generality of the foregoing, Con 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 Oxerments, conditions undire restrictions with respect to all Owners Associations within Vistaicia. If the Premises are composed exclusively or primarily of SPRs, the fivegoing componention as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt reintains and sales efforts on behalf of Cox. So long in Shea/Sunbelt reministing comput of the HOA as greated in Vistaicia's coordinates conditions and restrictions or multiples a responsy over in the Vistaicia Maintenance. Comparation. Cox will continue to pay Shea/Sunderly the above mentioned nonletone componential that 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 on times to perform the exclusive marketing obligations contained beccin 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/Sunblet closes its sales complex at Vistancia (the "Sales Facility") prior to Conversion or if Shea/Susbelt, in Cox's reasonable opinion, otherwise discontinues any of Shea/Susbelt'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 parcets of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through estrows that close during the Term of this CMA under its License, which Technology Services skall be provided by Cox in accordance with the standards set forth in Exhibit E:
- 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.
- Service Standard & Upgrades. Cox shall apgrade the CATV Technology Services within a reason 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 actinology services comprising all or a portion of the Fechnology 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 Anzona Telcox, LLC; and provided further that Cox shall have access to all such building and Cox shall mees reaconable customes 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. Car shall provide Internet Data Service for a cach resident of any SFR that substribes 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 Obfigation 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 largest Term of this COMA, and that the Technology Services can be provided to each SFR upon initial propagaty. Notwithstrating the Evergoing, Master Developer chall count to Cox Two Million Dollars, pavable in four count proporties of \$5(0),000 at the heromony of carb current beginning January 1, 2003, which shall constitute cost of the buildant 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-Wining in the SFRs, which shall be the responsibility of the applicable Neighborhood Builderiss and the condumination of the Master Developer; in accordance with system architecture and schematic plans set often Earbin B for those phases or portions of Vistancia in which Our receives the rights and interests contemptated under Seation 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or defirer the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the exervation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint treathers to accommedate 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 firm of Peority, Peority or other applicable, governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such treathers), which joint treathers shall conform to the route and specifications the may be necessary to accommedate 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 Develope; (3) installed the pre-wiring in all SFR₃ in compliance 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 Develope; (3) installed the pre-wiring Specifications attached in Entities D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder provined and accepted as in compliance with the Pre-Wiring Specifications

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(ii) Selection of Contractors. One shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Con 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, Permis & Compliance. Con 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 consens, approvals, applications, filings, permiss, licenses, bonds, insurance, inspections, construction, tabor, 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 fatures, 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 1 echnology Facilities is place at its own cost and expense. Cox shall operate, replace and maintain all Technology Facilities as 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 past or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or duranges 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, renad or purchase of associated Customer Premises Equipment and installation or hodium fees) shall be the same as are generally available from Cox in Peoria and the area of Line of Peoria adjacen to Vistoria and/or so are forth in Detected National Comp. Cox's tariffs for local exchange as set forth with the Arizona Corporation Commissio

- (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 finishe 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.
- Model Home Service. Cox shall make available in one main model bome 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). ion of the benefit provided by Cox shall be given
- Exclusive Marketing Rights and Marketing Incentive Fees.
 - Exclusive Rights of Con. During the Term of this CMA. (a)
 - Endorsement by Master Developer. Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;
- Marketing and Promotion of Technology Services. Master Developer bereby grants to Cox the exclusive right to market and promote the Technology Services in Visiancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Maxter Developes, and (ii) any mocer route to present by a reergoon most banker tan partnerses any posterior by some to be written any common area want by an Owners Association and made available by Master Developes for the matricing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Territoric Description and Cors provided in a consection of the common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model horner shall be to include the provisions set forth in Exhibit A in with the provisions of this suprements and option agreements as provided in subsection 6(b) of this OMA, it being specifically acknowledged and agreed by Con 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 (b) relating to model. homes of each Neighborhood Builder to whom it sells any portion of Vistanca shall be fully salisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

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- (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 beautit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox dectr out 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 permiss the co-branding of the intranet house 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 industrium districts.
- (b) Cox Marketing and Promotion Effort. Cox shall undertake to market and promote the Technology Services in an effective and deligent 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 <u>age set forth in Embire Co.</u> 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 secrued 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 Coa 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 fight in Ethibit 15.

- (c) 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 excrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to took report on the last day of the month. To the extern 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 extern 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 authorization to Technology Services for the period covered by such payment of Marketing Compensation to venify the amount of Marketing Compensation to venify the amount of Marketing Compensation due. All audits shall be conducted diving normal business hours and upon reasonable grior 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 off as a seasonable cost of the audited party shall reimburse the auditing party for the sustainable cost of the audit of the audited party shall reimburse the auditing party for the sustainable cost of the audit.
- 6. Technology Facilities Cooperation & Coordination by Master Developer.

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- (a) Cooperation by Master Developer, Master Developer shall enoperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Enhant B and shall establish and implement procedures to facilities the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Victoria durings the Term of this CMA.
- (b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached horton 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 these Developer shall must be acquired party to any such arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligations. As to properly within Vistancia that has already been sold to Neighborhood Builders and/or is, in excrow to be sold as of the

Agreement Dale, Masses Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Daildon to agree to the provision set forth in Exhibit A. Netwidustanding 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 is no corest stall 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 Co1, at Cox's cost and expense, in Cox's efforts to obtain the nan-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistoccia.
- (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 Marter Developer [as to common acra traces 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.
- (c) Cox Treaching Obligators. Unless otherwise provided for under this CMA or otherwise due to the billure of Cox to comply wish the terms and provisions of this CMA, Cox shall new be obligated, except as provided for in this subsection 6(c), to perform or pay for the excavation, opening or closing of any joint trench on or serving any position of Vistancia, or provide insulation of the building selectes from the joint trenches to any building, all of which shall be and remain solely the responsibility of Moster Developer and/or the applicable Neighborhood Bailder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Bailder in its subdivision Nowithstanding any contarry provision hereof, if Cox determines that any menching is necessary to accommodate Cox's Technology facilities that is wider than, deeper than, or otherwise beyond or different from the APS soute and specifications (such trenching being bereimfalter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the coxt thereof. Cox shall provide socies to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the breach that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching bosed on the Western States joint Trench Formula.

Technology Facilities Cooperation & Coordination by Cox.

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- (a) Installation of Technology Facilistics. Cos shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilistics described in Eubhii B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escribes 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 Developers (or the Neighborhood Builders) as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) herp Master Developer and the applicable Neighborhood Builder fully and bracely informed droughout the course of design and construction. Widrout limitation of the foregoing, Cos shall make the designs for the Technology Facilities for any given auditivision pancel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all comb Cos must make such design available in sufficient time to accommodate Cos's design within the plantidge for the reach in which the applicable Technology Facilities will be insufficient time to accommodate Cos's design within the plantidge for the reach in which 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 advessely impacted.
- (b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all selevant times thereafter. Cos 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 parted sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective continuation and cooperations by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Mastes Developer and/or any Heighborhood Builder shall provide no test than ten (10) business they notice of the final date to installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to reopen a completed metch to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) Governmental Pennius. Cos. will be responsible for obtaining all governmental pennius and licenses, zoning variances and other governmental approvals, at Cos's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) Warranty, Cox trakes 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.

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 builted services at discounted talks, 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 Sabrogation.

- (a) Required Insurance. During the Term of the CMA, Cox and Master Developer each shall mointain insurance satisfying the requirements of Exhibit F.
- (b) Damage or Destruction by Master Developer to the event that Master Developer or the agents thereof shall negligently or willfully durage 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 negligerally 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 reinfourse 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 Con or Master Developer he hable 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.
- (c) Waiver of Subrogation. Not withstanding 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 lots anxiong out of or incident to occurrence of the perts covered by property and easualty 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 hereto insurance in 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 channake any risk of loss or liability to any party who may have caused or created to the detinions of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had observed such insurance coverage (or an adequate amount thereof) in ties of self-insurance on 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 listified liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisited power and all requised governmental approvals to carry on six 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. Nother the execution and delivery by Master Developer of this CMA, nor the consumutation 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 Dote, and without otherwise limiting or qualifying the other representations, warranties and coverants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a chain 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 Coa's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.
 - (b) By Cox. Con 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 exter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) Due Authorization. Con 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.
- (in) The Execution. Each person who, in the name of Coa, executes this CMA has been duly authorized to execute this CMA on behalf of Coa.
- (iv) No Conflict. Neither the execution and delivery by Cox of this CMA not the consumention 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, warrantees 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 Linguism There is no languism 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 numerical compliance with all laws and regulations applicable to tion with this CMA.

Default and Remedies. 10.

- Events of Defoult 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
- (i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of sonney due bereunder within 30 days after receipt of written marke that payment is delinquent.
- (ii) Performance Default: A party shall be in "Performance Default" if the party fails to perform any obligation bereunder (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 faiture and diligently prosecute such cure to completios.
- (b) Remedies for Monetary Default, in the event of a Monetary Default, the non-defaulting porty shall have the right to recures 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 come on behalf of the defaulting party any default hereunder, and to obtain reimbusement from the defaulting party for the cost of such core, together with interest thereon from the date such cost was paid until embusted at the rate of 12% per anutum, 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. 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 refief in accordance with the applicable dispute resolution procedure of Section 12. (c)
- Master Developer Additional Remedies, in the event of a Performance Default by Con, Master Developer shall Deleted: 14 Master have the right to collect actual damages, obtain specific performance or injunctive relief in accombance 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
- Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly (g) provided in this Section 10.
- No Consequential Domoges. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- Termination and Partial Termination; Rights of Parties after Termination.
- Additional Rights to Terminate. In addition to termination on capitation of the Initial Term as provided in romanion as permitted under Section 10, this CMA way be terminated or partially terminated under the following Section 7 or ten circumstances:

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(i) Cestation 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 Car of Penna 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 whatoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

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- (ii) Master Developes Determination. If Master Developer determinates 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 explanation, including as explanation of its response and/or, if applicable, in proposed plan of secolution. 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 succing (or if Cox is unable or otherwise fails to meet with Master Developer within 10 business days following such succing (or if Cox is unable or otherwise fails to meet with Master Developer within 10 business days following such succing (or if Cox is 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 is timized determination of Cox in the confident of the confidence of Cox of the confidence of
- (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 uncurred default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all executeds 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 executeds. 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 have or regulation to offer and provide Technology Services to residents of STRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar apprenent 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 Markeing 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 insultation, 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 unser Technology Services. In addition, and regardless of the essaon for remination, 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 essentents 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:

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- (i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Conshall remove any and all of their other facilities, equipment, familiangs and other items of personal property which are housted within improvements or sunctares, or otherwise on property, owned by Mester Developer and 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 estements 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 passonal property which are located within or on property owned by Cnx.;
- (ii) Destruction of Co-Branded Materials. Each parry shall eliminate, descroy and crase the use of any co-branded or joint markeing materials produced under or in accordance with this CMA; and
- (iii) Intransi Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistanciane" and Master Developer shall remove all of its equipment used in the operation of "Vistancianet" from the property owned by Cox.

12. Dispute Resolution Mechanisms

The parties have agreed on the following mechanisms in order to obtain prompt and experiment resolution of disputes formation. 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 pury 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 shys 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 filled, there shall be no en 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 "Chimss"). 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 mediaton was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (10) 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 sourmary 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 bone equally by both parties. Upon a determination by the Mediator that further meningful results, he shall declare the mediation procedure termination, and manner 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 mature of the dispute, controversy or claim and (ii) man an arbitrator who is experienced in the subject matter of the issue and dispute. Within tea (10) days after the other party's receipt of such demand, such other party shall name the socood 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 winterstees, 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 purities as the arbitration panel may deem equitable the costs incurred by the prevailing party.

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- (e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the roles 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 readered by the arbitration panel should be final, conclusive and binding upon the parties and any judgmens 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 concert (i) to any other developer in connection with an assignment of substantially all of the then easting interest of Master Developer in Vistanera; (ii) to any entiry which hat, 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 easily 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, and saxignment by Master Developer shall not be effective until the assignee signs and delivers to Can a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA utiling from and after the effective date of assignment and if such assignment, 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, 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 Masser 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 'Affliate'); (ii) to any entity with which Cox and/or any Affliate 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 Affliate, (iii) 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 Pouria 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 assignment asset extend on a winten agreement, in firm reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Con 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. Miscellancous.

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- (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 casements 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 supersed all prior agreements except those referred to berein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

Deleted: (14)

- (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 CMAs 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 winess fees and disbuscements (and specifically including fairly allocated costs of in-house consecto), 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, referre or arbitration determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be decaused the non-prevailing party.
- (d) Unenforceability. The determination that my 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.
- (c) 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 tertified or registered mail, postage prepaid, return receips requested, by conformed far, or by reliable overnight convier in 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 addresser's registry or certification of receipt or on the date receipt is refused as shown on the received or such courier. A party may from time to time designate any other address for this purpose by written notice to the other pury.
- (g) Relationship of Parties. The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint verturer or employee.
- (h) Third Party Boneficiaries. Nothing contained in this CMA is intended or sholl 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 decined 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 and 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 decired to waive, calaust or impair any right, remedy or privers of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, coversant or condition of this CMA shall be valid unless in writing and signed by the obliger party. No russom 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 transfer of this CMA.
- (h) Brokerage. Each party to this CIMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CIMA. Each party agrees to indemaify, protect, defend with counsed acceptable to the other party and hold hamdess the other party against any claim for contraistion, 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 CIMA.
- (1) 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.

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- (m) Continuing Effect. All coverants, agreements, representations and warranties made is or pursuant to this CMA shall be deemed continuing and mode at and as of the Agreement Date and at and as of all other applicable times during the Form.
- (a) Meaning of Certain Terms. When the context to 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 a introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "sobsections" 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 "persons" includes individuals, entities and governmental authorities. The words "governmental and context authorities are intended to be constitued 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 constitued broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, naings, judgments, opinions, bottings and orders of a court, administrative body or arbitrator.
- (0) Rules of Construction. The language in all parts of this CMA shall in all exses 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 partiest and has been the subject of arm's length and careful regoritation, that each party has been given the opportunity to independently review this CMA with legal counted, and that each party has the requisite experience and substitization to undestantle, interpret and agree to the particular language of the provisions bettod. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or constructed 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) Propressay Information. Each party acknowledges and agrees that any and all information creanating from the other's basiness in any form is "Confidental Information", and each party agrees that it will not, during or after this CMA terminates, permit the duffication, see or disclosure of any such Confidental Information to appear on an authorized by the disclosure; provided that either party shall have any obligation with respect to any such information that it, or becomes, publicly tomour through no wrongful act of such party, or that it is rightfully received from a dierd 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 eare that such party uses in respect to its own confidential information of like nature, to prevent the unouthorized disclosure or reproduction of such information. Without firming the generality of the foregoing, to the extra 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 recipients means of the confidence at the time of its receipt, and information properly obtained hereafter from a snorte that is not under an obligation of confidence at the time of its receipt, and information.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cos's executent rights, such memorandum shall be in heli formated 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"	Shea/Surbelt Holdings
Address:	B _T :

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and required copy to 6720 N. Scottsdale Road Seite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419

"Cox

Address: 20401 N. 29th Avenue Phoenix, AZ 85719

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сохо	DM, INC., a Deli	rware corporation,	
ያራሌ C	OX COMMUNI	CATIONS Phoenia	
Ву:			
	Howard Tigern	W A	
	VP of Business	Operations	

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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 2002 with Coscorn, Inc., a Delaware corporation d'b/a Con Communications Phoenia ("Con"), un helpill of insell' and int affiliated omitties, 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 Duyer. 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 therewish, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer,
- Cus shall have the exclusive right to market and promote Technology Services (as defined to the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its n by including the Cox Digital Community logo (to be provided by Cox). Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community"
- (e) Cox shall Buyer within the Property; Cox shall have the preferred right to provide Technology Services to each model home office operated by
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary obliny 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 unliny distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to <u>fire of Proria</u>, the City of Proria or other anotherable assessment and the property. case of trenches within rights of way dedicated to fits of Portia of the City of Portia or other applicable governmental authority.

 Detector: Marious Course, the City of Portia or other applicable governmental authority.

 Detector: Marious Course, the City of Portia or other applicable governmental authority to such Technology Facilities as Coa is permined by fift of Detector: Marious Course, Portia, the City of Portia or applicable governmental authority to install in such trenches;

Cox is intended to be a third-pury 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 Visione in being parthosed by the Neighborhood Builder parsums to the particular purchase agreement or option agreement.]

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Exhibi B

Technology Facilities

Technology Facilities shall be abstract and installed to meet the full oring minimum consecurants:

I) Network

- a) Distribution plant will be described installed and activated to 7.0 MHz bi-directional HFC. Network supported via self-healing floor ring packetone.
- b) Average made size will be \$100 homes and he limited to no more than six 160 actives in execute.
- c) Developed to provide oil repolet transfers for placement of introductions. Con will incoll all conduct coincids needed exchanges for the far network to make deployment of Con Exchanges Services. Advance participation in actual and preions transfer enordination climits with Visuania and other expected whites its essential to form one-joint Transfer modding and distribution. Cox will manife change conduit where appropriate based on underprised for needs.
- d) The provisioning from the pedecial, to the SFR (Single Family Registers) Democration NID (Normal, Interface Device), shall be by consist cable. Developer will use reasonable offers no enable Cur's standard design parameters than exercise a maximum distance of 150 for between performal SFR NID. Developer with one received efforts to enable Cur's access in every. SFR NID: NID2 will be person's mastered.
- e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 1) Vittor Services: Most or exceed industry standards for processining quantity and signal quality, of analog and digital cable programming.
- 2) Ypics Services: Your services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Statistics, Can will recorded executable care to project the interrity and exemit cellul network traffic and shall actively manusor for incursions. Data making shall be compliant with all MCNSTOCCUS stoucheds and provide for data pracket encryption.
- Bendwidth: The network will be combit of interval in accordance with the Technological & Services Standards combiteted under the ECC and established franchise commitments.
- 5) Survive Bumbridth Guaranter: In the every that the above any demnined not to have been men, or have introoperably depended before the minimum for an everyon of over 10% of the customer base, within a node, over one menth's time. Cox shall, in its suck cost, the cox or more of the following:
 - Spit the affected models) to lessen the number of homes served but without obligation to uplit below an average of 30 units psy nock;
 - p) Oben syljmuniy dina cpanieta" in

Implement such other actions, as Can deems oppropriate, to speet the minumous

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Deleted: the designed and installed to man the following arisins m

Defected: (1) Nerwork. Floral activated to 350 Mts. 2-way seekind serviced to 350 Mts. 2-way seekind SEC Nerwork with a fiber Rings in 3 lines backbase. Con will restrain tone to seekinsseed over to the rich shadow neededs to enable additional? Technology Service by Can and/or Tax backeys fearing to man. Active devices with the fainful to mai. Active devices with the fainful to mai. Journal supply so 300 hours energy eached on ourset than fire (1) cansish supplificate per careful.

- T
 (A) Voice services will be offered in
 compliance with the ACC's and Belleum
 Standards of Service?
- (a) ISBM 18th and 16 FC. How Visitation has the locate contrict. Property sight pressure purpose of sortin Property. All endet connected both to suits habe the contriling flowed addition of one, making dedicated applications. There as 1977 Connection to Cars's Brazer Teleconominication? Gentle in Facilies in a set designated by Carce property.
- (c) Redundancy, Redundant interegrancesion with the U.E.C.s. U.C.s and IS-Re must be provided for system integrity and artexas to the public negroup and artexas to the public
- network 5 (D) Herverk Schematic The Vistancia network administic sold be provided upon templation of the network designe. Vistancia posts not copy or distribute the simple may provided as it is anniformation of information of Cox.1
- (3) Bangnieth. The servork must be expelle of defreey in accordance with the Technology? A Service Sandords exablished under the PCT and etablished is auctional commissions under the following?
- (a) Vision hier or exceed indistry anothers for quantity and quality of making and digital coble programming
- (b) Data. Data removal will be alarmed and members of a tribe MTC and SOC.1
- (c) Voice Minimum average capacity of 2.5 lines per hours
- [4] Service Bandwith Generator. In the cross that for above maintaines are determined and to large horse more at large determined and to large horse more at large language of dependent between the maintainess for an artist get of ever 10% of the common horse valida is upon one proundly kine. Can shall as its costs. [1]

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Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described heroic) that shall be undertaken by Cox with vespect to the Technology Services in Yistancia, and so the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entited to soupset any marketing or promotion services from Cox in excess of those set fairly in this Exhibit.

Deseited: firm

Master Developer will assist Cox in meeting and communicating with Neighborhood fluitders 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 durough 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:

- 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 approved of each party co-branded with Cox and Master Developer trade names and trademarks.
- A minimum of one month advertising in a local homebushlor/ 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 so obtain Cable Rep's approval to receive discount cross channel promotional adventising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party cobranded with Cox and Master developer rade names in the trademarks.
- 4) Participation in any future "Coa Digital Community" media compaigns that occur. Master Developer will be given fiest right of refusal to participate in compaign(s) before being offered to any other Master Developed 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 Developed Builder! Cox Participant in Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cos'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 Con services
- (b) all of the above will require regular meetings and will include Master Developer and Con to confer of mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, seview and modify promotional brochures, packages, advertisements and other collateral materials;

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- (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistascia that will reference Vistancia partnership with Con-Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each porty;
 - (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (c) highlight Technology Services in meetings with prospective buyers and at other apportune times during the workering process;
- (f) provide prespective 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 costonably acceptable schedule;
- (b) seek to include Coa's subscription agreement for video and data, which shall include the Acceptable.

 Use Policy, and description of all services in each escrine package and/or New Homenwaters welcome folders;
- (i) include Cox's name and a bnef description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia on any phase thereof whenever such advertisements describe the technology espects of the amendes 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;
- (1) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party sours (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 tope, film or other media presentations relating to provision of Technology Services to the Property;
 - (m) concourage 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 purmounnal 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 Homebayers Information folders, "only" Cor sales packages information and materials when referring to technology providers for Vistancia, SP-Rs being developed and Technology Services expected to be a part thereof.

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DOUBLE

Technology & Service Standards

į	1. Standards. Con shall, or shall cause its affiliated companies to develop, deliver and generally maintain the Technology Services is accordance with the following applicable industry benchmark practices and standards "Technology & Service Standards")	Deletok
l	(a) Franchise on ficense requirements imposed by Peona or other applicable governmental authority, the Federal Communications Commission ("FOC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;	Deletad:
ŧ	(b)Tariffs on file with the ACC	•
l	(c) Bellcore (including TA.NWT-000909);	
ŧ	(d)National Cable Television Association; and	
l	(e)Data Network Standards.	
Ì	2. Security. Con will energise 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 moderns 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 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 pro-wring installed by others or fainure of a responsible party other from Cox to properly maintain such pre-wring or due to resolutor-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 pharmed outages under the same conditions in which Cox is mandated by the Franchise authorities or the affected outsomers of such outages and will stirk Master Developer of handen and the provider of such outages.	Policials

EXHIBIT F

Insurance Requirements

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EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Develope a person of revence, according to the following scale, for it is marketing of Cox's products and services. The revenue will be read on the measurement sales above 73% penetration. The practation will be calculated by dividing universations to lead from a passer. Penetration will be calculated mentily and paid market Wildershire the class of the quency. This scale is for Valey, Phone and Internet. It is exclusive of for accessed for power-view marks, long dictance, installation, equipment, emists and tag & ficence.

Penetration	Payor
75%-79%	35%
311%- 55%	16%
36%-90%	17%
20%-25%	18%
96%-100%	27%

Mark time Compensation will be paid individually per godine achieving 75% penetration. Fach product must stand on its poor merit in order to qualify for marketing compensation.

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Unknows

(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 ACCs 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, IXCs 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 fler 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: Bousen, 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

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

Spark.

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 __dry of _____. 2002 between Curs Business Services, 11.C ("Curs") on behalf of its affiliates, and Shea Surfact Holdings Pleasant Point 11.C, an Arizona limited liability company, drb-s _______ a _________ corporation, hereinsiter "Master Developer."

RECITALS

- A. Master Developer is the beneficial owner of and is developing Vistancia, a master planted 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 apended 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 add 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 atfiliated entites 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 if a affiliated entities will make such services available to commercial buildings in Vistancia upon the constructed in Vistancia.
- E. Master Developer anticipates transferring portions of Visuancia 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 I reserve, certain rights and interests and to establish escenarios or <u>similar use rights</u>, 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 assument in similar use right and access to the Premiers 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

. 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 Vistanzia 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 inclidies located within the right-of-way abutting a Building property upon which the Building Conduit does not include Backbone Conduit.
 - (c) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
 - (1) "Contractors" means contractors, subsyntractors, 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 moderns, 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.
- (1) "Master Developer" means Shea-Sunbelt 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 fittle from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings between
- (a) "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 tale 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 junisdiction

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over Virtuacia or the applicable portion thereof. A Plat described in the preceding item is cornetimes hereafter referred

(p) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim as set forth in ____ Deletent in Exhibit C

- (q) "Vistancia" means the commercial Buildings within the neishr planned community being developed in Penria, Arizona, described in Recital A.
- (r) "Tochnology 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, pade, cross cunned panels, fiber/[] interfaces, cabling interfaces, patch panels and cords, routers bridgers, liber transactivers, test equipment, power interfaces, service drop mining 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 constraint services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at
- (f) "Telephone Service" means local telephone service with access to tell and long distance telephone international service provided by or through a Cox alliliate 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 mability to fulfill a monetary obligation, an intervening act of God or public enemy, tire, hurricane, storm, adverse wenther conditions, floot, earthquake, epidemie, explusion, volcanie eruption, lightning, nuclear radiation, earth shides, geologic or archaeological condition, contamination of soil or groundwaker with hazardous materials, loss of power or utilides, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), not, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, hitigation challenging the validity or enforceability of this Agreement, change is law, regulation or policy prohibiting a perty 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 need 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 ensualty 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.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, cummencing on reserved Date. At the end of the initial Term, this Agreement will automatically reners for two successive terms of the Agreement Date. At the end of the Initial Term, this Agreement will automatically reners for two success 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."

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Fescurents and Access Rights.

Muster Plan Utility (Technology Facilities) Easements & Access Rights. During the application and processing by Muster Developer of each Parcel Plat during the Term of this Agreement, it is contemplated that Master Developer will establish non-exclusive public utility casements or ortios similar too rights (which shall include a

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ı	non-exclusive right to place Technology Facilities within the area, in conjunction with other public utility providers) in	Deleted: coords
۴.	connection with the approval of such Plat by Pooria and or other applicable governmental authority, including defineating on such Plat (or other instrument of second such as, by way of example and not of limitation, a tract declaration) the exsements and use rights provided for in this Agreement, as follows:	Deleted: a cha sinier pergits
1	(i) Technology Facilities-Master Developer. Non-exclusive public utility casements or similar use tights, 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 great to construct, install, repair, replace and maintain public utility systems and facilities including, but not familied to telecommunications services and internal services, and similar communication systems and or facilities consisting of underground wires, conduits, cables, shalls, and other similar outdoorness accessary 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.	Defects of: columns to
1	(ii) Right of Entry to Install Technology Facilities. During the Term of this Agreement, within the period allocated by Master Developer and Cay 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 nonfacriminatory opportunity to construct and install the Technology Facilities, using the areas, established and other user rights provided for in this Agreement, at the success and expense of Cox. (iii) Nun-Exclusive Liceuse to Cox. Cox shall have, during the Term of this Agreement, a non-exclusive liceuse 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 Vistencia, at the sole cost and	Deleted; common
	Coperso of Cox. (b) Utility (Technology Facilities) Easements & Access Rights, During the application and processing of each Oler during the Technology Facilities).	• •
ı	of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility casements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the	Defeted; crosso
1	area, in common with other public utility providers), in connection with the approval of such Plat by Master Developer and	Delicted: or other similar are rights
Ī	Peoria (and/or other applicable governmental authority), including defineating on such Plat (or other instrument of record	
1	such as, by way of example and not of limitation, a tract declaration) the areas, and use rights provided for in this	Daleted: exemen
ı	Agreement, and Master Developer shall not approve any such Plat unless the areas, and use rights provided for in this	Balotod: carenete
ļ	Agreement are established, which areas, shall be defineded on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:	Deleted: commute
1	(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 rublic 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 familed to, eable television, relecommunications, Internet service andors 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, fight wave and/or radio frequencies, provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unsensonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.	
1	(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	Deleted: estmess
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and maintain the Technology Facilities and provide the Technology Services to all Buildings that any be built, at the sale 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 one commercial pascel 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 nonexcharge, irrevocable focuse thring the Term of this Agreement 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 Anzona faw to run with the land in question and to bind all successive owners of such land.
- (c) Repoil of Improvements. Cos shall primptly require and restore (to their condition existing immediately prior to such use by Cox exclusive of normal year 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.
- 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, Muster 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.

(including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be brinding upon any owner of any portion of Vistancia, other than any Owner that proclasses 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) Cax 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 Dand upon occupancy of the first such building in Vistancia.

(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.

(5) 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 official 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 community available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the terants thereof,

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cach ternal the subscribes for such service, provided that Cox shall be entitled to provide such service by or through a parent, subscribes for such service, provided that Cox shall be entitled to provide such service by or through a parent, subscidient or Affiliate of Cox, including but not limited to Cox Anzona Telcon, LLC, and provided further that Cox shall have occurs to all such building and Cox shall mod reconstable customar 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 swallable 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 laterant Data Service for each ternal 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 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 toward upon initial occupancy.

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(i) Design & Installation Conditions; Cox shall design and install the Technology Facilities (exclusive of the Pro-Wring 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 these planses or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. Herverer, 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 desiring (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 very dedicated to City of Peoria, Pooria 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 storves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C; of 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, tilings, 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 to in artiting 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 in place at its own cost and expense. Cox shall operate, repair, explace 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 armedies 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 Provises Equipment (including as to the annual of any deposit, advance prynent, senial or purchase of associated Customer Provises Equipment and installation or hookup focs) shall be the same as are generally available from Cox in Penria and the area of City of Penria adjacent to Vistancia and or as set forth in Cox's taniffs 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

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- (a) Exclusive Rights of Cox During the Term of this Agreement:
- Endorsement by Master Developer, Master Developer shall endorse Cox exclusively as the preferred provides of the Technology Services to Vistancin;
- (i) Marketing and Promotion of Technology Services. Master Developer hereby grants to Cox the exchasive 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.
- (ii) 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 activates 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 commocial) 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 Torm of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Paddings. Master Developer shall composite 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 sait or arbitration initiated by Cox seeking to enforce any such Owner obligation.
- (c) Cooperation in use of Utility Eastmants. 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) eisements or other similar ose rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) No Obligation of Cut 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 creeded 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 excentation, opening or closing of any joint treach on or serving amy portion of Vistancia, or provide installation of the halding sleeves from the joint treaches to any building, all of which shall be and remain salely the responsibility of Master Developer and/or the applicable Owner(s).
- (I) 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 releast 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 Conperation & Coordination by Cox.
- (a) Installation of Technology Facilities. Cox shall (i) ecoperate 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 excurse that close during Term of this Agreement, (ii) commence and complete its design, construction and usualization 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 faintly informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox. I with at least six, (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Crix fails to obtain adequate capital firs its construction sets. 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 apply not completion; provided, however, that in all events Cox must make such design available to insufficient time to accommodate Cox's design within the plannidesign for the trench in which the applicable Technology Facilities will be insufficed. 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 sufterrupted or adversely impr

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- (b) Timely Delivery of Plans. At all times during the Term of this Agreement, and at all relevant times thereafter, Cos will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cos 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 econtination 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) haziness 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 my 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 exponse, 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 after 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 comperative implementation of procedures for resolving day- to-day construction issues within Vistancia.
 - (I) Marketing of Commercial Buildings

Cox will cooperate with Master Developer during the Tenn 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 Indennification, Waiver of Subrusations
- (a) Required Insurance. During the Term of the Agreement, Cox and Master Developer cach 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 Fucilities owned by Cox in connection with or arising from the construction or instablation 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 negligeatly or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Fochnology 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 Cost or Master Developer be liable to the other party for any loss, recovery or restoration or 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 thereform.

(c) Waiver of Subrogation. Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waiver all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils concered by property and easualty insurance that is required to be earlied by each party hereto pursuant to subscattion (a), aniwithstanding the annum and type of such insurance converage 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 estant, except with respect to the combursement provisions of subsections (b) and (c) above to the extent not covered by insurance, and the parties hereto neknowledge 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 enasted to the detriment of the other party any loss or liability which would have been covered by property insurance and finability insurance if each other party had obtained such insurance coverage (or an adequate amount for our observations (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 berein 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 coverants of Master Developer under this Agreement, the executive management of Master Developer has no browledge of any written notice asserting a claim that might reasonably be expected to menerally impair the use of the Technology Services.
- (iv) No Litigation. There is no bitigation 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 expiration rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any period 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 duty organized corporation erested 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 scirrifies, 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.
- (ii) 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 bereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a porty or by which it is bound, and as of the Agreement Doxe, and without otherwise limiting or qualifying the other representations, warranties and covernants 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 impost the use of the Tochnology Services.
- (v) No Litigation. There is no hitigation 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 hitigation 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 Remadies.

- (a) Events of Default. Each of the following circumstances shall constitute a default under this Agreement, in which ease 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 diffigently prosecute such cure to completion.
- (b) Remedies for Monctary Default. In the exemt of a Monctary 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.
- (e) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to care on behalf of the defaulting party any default becoming, and to obtain reimbursement from the defaulting party for the cost of such care, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per animum, 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 Remodies. 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 creat of a Performance Default by Cox. Master Developer shall have the right in 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 reseind 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 trable 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 exceed 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 respund 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 of telephonically, in order to discuss their differences. Within 10 business days rothlowing such meeting (or if Cox is unable or otherwise fails to meet with Master Developer's within 10 business days period, within 20 business days of Master Developer's invalid electromention), Master Developer's invalid electromention), Master Developer's invalid electromention, Master Developer's invalid electromention), Master Developer's invalid electromention, Master Developer's invalid electromention, Master Developer's invalid electromention, Master Developer's invalid electromention, material electromention process provided for in Section 12(a), by maties to Master Developer within 5 business days of receipt of Master Developer 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 reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer's reasonable satisfaction within 30 days of receipt of factor of 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 Definith or Master Developer Determination. After termination following an uncured definit, 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, becomes or pursuant baseds, and may continue to deliver Technology Service to the tenents in the Buildings and install, operate and maintain its Technology Facilities within such exercises as similar use rights. No termination of the Agreement shall be minimize or acstrict in any way the rights that Cox has or may have under its License or by applicable have or regulation to offer and provide Technology Services to termination. Master Developer shall have the right to enter into a preferred provider of 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 be built out by that Owner, or with any towart of a Pariding 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 definented 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 or similar user rights, which have been established for the non-resolutive use of Cox.
- (c) Unrainting. Them the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prodent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without finalished:
- (i) Removal of Property. Within 30 days after the expiration or earlier teranation of this Agreement, (i) Cox shall remove any and all of their other facilities, equipment, fivaishings and other items of personal property which are located within improvements or smucluses, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox does necessary for delivery of Technology Services to present or inture subscribers for any Technology Service which are located within casements 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 climinate, 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 may 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.

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The parties have agreed on the following mechanisms in order to obtain prompt and expeditions resolution of disputes hereundes, 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 precedures:

(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 porty and to a mediator mutually neceptable 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 filled, 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 enucerus set forth in the demand notice and/or the response thereto (collectively the Thinns'). In the event he deems that they are not, he shall thinge his best efforts to obtain the information in a prompt number. The Mediator shall immediately prepare an agenda to both parties within tifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (20) 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 Claima, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an ogreement 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 notices pertaining to actilement negotiations, and not subsequently admissible at any further proceeding, except for the assumance of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be home 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 near the 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 matter 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 domand, 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 & Fors. Master Developer and Cox shall each bear fifty percent (50%) of all fors, costs and expenses of the arbitration, and each party shall bear in own legal fors 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 mitiration panel may apportion between the parties as the arbitration panel may door 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 birding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

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 turneasonably 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 Cos's cousent (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 bayer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer, or (v) to at entity that controls the encounts or rights in the areas where the Jechnology 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 ubligations under this Agreement arising from and after the effective date of assignment and if such assignoe has calored into a written opportunat, 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 casement or similar use rights, permit or other assurances of access granted to Cox hereunder or pursuant herdo respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly, o, 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 rinege 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 outstanding ownership units of Cox's business conducted in Powis or other applicable governmental authority, or to any transferce of the License or other legal authority of Cox to provide CATV to customes in Petria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any tuch assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignment shall not be effective until the assignment shall not be effective until the assignment 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 reliced of all usponsibility 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 Cos.
- (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 superscale 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 recurve from the non-prevailing party all fees, costs and expenses, including but not limited to attorney' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house coenset), 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, it such amount as the count, referee or arbitration determines reasonable. Any party entering a voluntary dismission of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the non-prevailing party.
- (d) Unconforceability. The determination that any provision of this Agreement is invalid or menforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or mentionceable 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 couries to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered on treaty served by facestrale transmission shall be deemed delivered on the date of receipt as shown on the received facestrale, 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 date of receipt 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 perty.
- (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.
- (b) Third Penry Beneficiaries. Except as otherwise provided herein in this Agreement, nothing crotained 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 gardy 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 voiver of any term, covenant or condition of this Agreement shall be valid unters in writing and signed by the obligee party. No enstone or practice between the parties in the advantation 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.
- (b) Brokerage. Each party to this Agreement represents and warrants that it has not dealt with any real estate backer or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with coursed acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or fibe 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.
- (1) Additional Documents. Each party hereto shall execute and deliver an such additional instruments as may from time to time be necessary, reasonable audior appropriate and requested by another party in order to implement and entry out the obligations agreed to be reunder.
- (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 ploral, 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 fimilation. 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.

mother 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, instrumentabilities, bodies, boards, departments and officers and individuals acting in any official epacity. 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 he construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties been acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of stril's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal coursel, 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 Agreemens 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) Propriettry 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, publishy known through no vivonghil 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 difigence, and in no event less than that degree of care that such porty 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 estent 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 recipical party as of the date of this Agreement as shown by the recipical's written records, unless the recipical party agreed to keep such information in confidence at the time of its receipt, and information property obtained bereafter from a source that is not under an obligation of confidentiality with respect to such information property

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. Sunbell Pleasant Point LLC	COX DESTRESS SERVICES, LLCC				
•					
Bv:	By				
		Robert C			
lix	Îts	Vice Pres	ident		
•					
and required copy to	and required copy to:				
6720 N. Sonnsdale Road	2095 W. Pirmecle Peak Rd., Suite 110				

- I PAGE 1-

Suite 160 • Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419-

Phoenix, A2 85027 Phone: (623)322-7472 Facsimile: (623)322-7983

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EXCUDIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer-Seller has entered into that certain Commencial Telecommunications Access Agreement dated

'2002 with Coxcorn, Inc., a Delaware corporation db/a Cox Communications Phoenix ("Cox"), a true
and current copy of which, together with all anneathment(s) therefore (if any) that have been excusted as of the date of this
Agreement (such Agreement and amondment(s) being bereinafter 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 bereby agrees that that its new of the Agreement.

- (a) Owner shall provide substantially the same cooperation and coordination with Cux as agreed to by Master Developer pursuent 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 Team 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. Correlating there is Technology Pacifities to provide Technology Services.
- (c) Owner shell submin its construction plans to Cox at least six. (6) months prior to Cox commencing installation of the Technology Facilities.

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- (d) Owner shall observe the Pro-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material retorenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner.
- (c) Cox shall have the exclusive right to nurket 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 Duiking built by Owner within Vistancia;
- (h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary unliky distribution treaches within the Property, which treaches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building electes from utility distribution treaches to each Bailding constructed by Bayer on the Property. In the case of treaches 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 treaches;
- (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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DOBBIT 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 enastruction 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

- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of enalog and digital cable programming.
- Voice Services: Voice services shall be affered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data moderns shall be compliant with all MCNS-DOCSIS standards and provide for data packet energytion.
- 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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ЕХНОВІТ С

CATV/Data Service

Pro Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

- Standards, Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Texturalogy 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) Tarills on file with the ACC
 - (c) Belleore (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 network monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data made as shall be compliant with all MCNS-DOCSIS standards and provide for data packet encryption.
- 3. Service Response. Cox most 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 liceuse requirements imposed by Peona or other applicable governmental authority. FCC, ACC, or other applicable governmental authority and as provided in the agreement with the individual subscribers for the provision of service, and such credit shall be reflected on the following periods 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 ministain such pro-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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Insurance Requirements

To Bc Determined

-1 PAGE) -

	A
1	Vistancia
2	Summary of Changes from JEGB
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

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 roview 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

Shea/Sunbelt Pleasant Point, LLC

COXCOM, INC. PROPERTY ACCESS AGREEMENT

This	PROPERT	Y ACCESS	AGREEMENT	Agreement	is entered into t	thisday of	, 2002 between
Cox Busines	Services,	LLC ("Con	") on behalf of	l its affiliates,	located at	. <u> </u>	and Shea/Sunbelt
Pleasant Poi	nt LLC, an	Anzona E	mited liability	company, loca	nted at		("Master
Developer").				7 - 7			

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 entites 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.

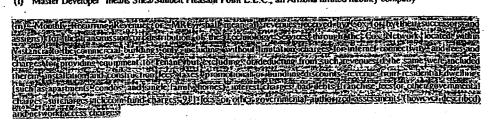
NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer and Cox agree as follows:

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 nights-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) "CATY" 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 moderns, 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.
 - (I) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company



(n) "Official Records" means the official records of the City of Pooria, Arizona, pertaining to real property

- (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/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.
- (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 cruption, 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, lingation challenging the validity or enforceability of this "Agreement, change in law, regulation or policy probibiting 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 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, 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.

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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 casements (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 casements 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 casements and use rights provided for in this Agreement are established, which easements shall be defineated 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

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 thiring 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 Telcorn, 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 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.
- 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.

- I PAGE 1 -

- (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, fifings, 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.
- (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 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,

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 commecial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

- 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 fonn 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.

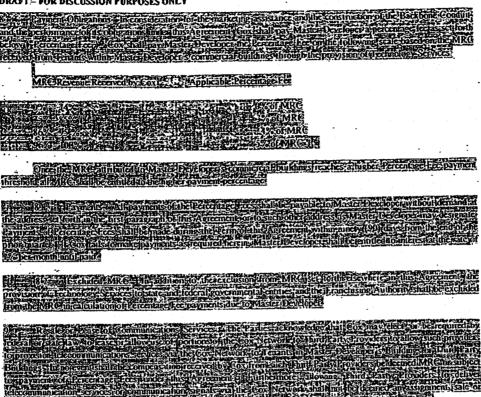
 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to

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 wring 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

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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.



- Insurance; Indemnification; Waiver of Subrogation.
- Required Insurance. During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.
- 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.
- 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.
- 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 bereto 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).

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 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 coverants 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:
- 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 Couflict. 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 hercunder 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 the 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).

- (c) 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 selief 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.
- 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.
- 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

- (c) 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.
- 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 unicsolved 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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Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements. 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 office 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 easements 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-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, (i) 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 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 home 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 expens 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) 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

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 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 assignment 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.

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 coursel), 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.
- (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 counter to the address of the other party set forth on the signalure 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 counter 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, coverant 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 fike 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.
- (1) 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 "govern-mental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, broads, 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

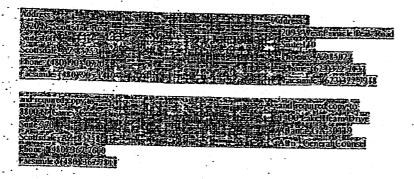
other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a count, administrative body or arbitrator.

- (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 terrainates, 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/Sunbolt Pleasant Point LLC Cox Com Inc. a Delaware corporate	OB:
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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 dbla 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 connected 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.
- (c) 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.

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

- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 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 moderns 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.

EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

- I PAGE 1 -

EXHIBIT D

Technology & Service Standards

- I 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.
- 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
 moderns 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-wring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wring 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

- I PAGE 1 -

BEFORE THE ARIZONA CORPORATION COMMISSION

1 2 **COMMISSIONERS** JEFF HATCH-MILLER - CHAIRMAN 3 WILLIAM A. MUNDELL MARC SPITZER 4 MIKE GLEASON KRISTIN K. MAYES 5 6 DOCKET NO. T-03471A-05-0064 IN THE MATTER OF THE FORMAL COMPLAINT OF ACCIPITER COMMUNICATIONS, INC., AGAINST 8 VISTANCIA COMMUNICATIONS, L.L.C., SHEA SUNBELT PLEASANT POINT, L.L.C., AND COX ARIZONA TELCOM, LLC. 10 11 12 13 **DIRECT TESTIMONY** 14 **OF** 15 LINDA TRICKEY 16 ON BEHALF OF 17 COX ARIZONA TELCOM, L.L.C. 18 19 **ATTACHMENTS** 20 21 LT-1 Through LT-27 22 2 of 2 23 24 25 26 April 5, 2006 27

LT-10

Erom : Acroshy Sheilar(EC) Phoenix

Tuesday, November 26, 2002 1:38 PM

To: Rizley, Steve (CCI-Phoenix)

Drake, Paul (CCI-Phoenix), Arthurs, Tisha (CCI-Phoenix), Tigerman, Howard (CCI-Cc

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.

Vice President of Sales Desk: 623-322-7922 Fax: 623-322-7918

Mobile: 602-694-0745 Sheita.Crosby@cox.com

-Original Message

From: Arthurs, Tisha (CCI-Phoenix) Sent:

Monday, November 25, 2002 10:07 AM Crosby, Sheila (CCI-Phoenix) Tot 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 ent.doc (131 K

Thanks again for all your support during this brutal process.

Best regards, Tisha Arthurs Cox Communications St. Account Executive (623)322-7857

Shea/Sunbelt Holdings & COXCOM, INC. CO-MARKETING AGREEMENT

This AGREEMENT FOR TECHNOLOGY FACILITIES		
, 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 emity 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.
- (I) "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 thin 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.

- (t) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property
- (u) "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).
- "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 SERs 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 bereafter 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.
- (2) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (2a) "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, pack, 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.
- (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 earnier 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), not, 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.

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 thiring 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 emitted 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 imreasonably 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 monexclusive 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 Telcom, 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 Facilites for the initial phase of the Development Area.

- Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wining in the SFRs and the installation of conduit, which shall be the responsibility of the applicable Neighborhood Builder(sin 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, renal 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 premum 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 (h) relating to model homes of each Neighborhood Builder, and (B) all obligations 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.

- (c) 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 escrew 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) casements 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 crected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Tunnover 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.

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 himitation 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 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 after 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 bereto 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 lien 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 Lingation. 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 hitigation 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 bet 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.

- 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 unerwed 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 "Vistanciamet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

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 until the assignee signs and delivers to Cox a document in which the 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, then Master
- (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 financhising 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 vacale 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 decreed 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.
- (i) 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.
- (1) 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 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.
- (0) 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 formated 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"	Shea/Sunbelt Holding By:	25	
Address:		•	
6720 N. Scottsdale Road	Its:		
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

Country of Marinosa				
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				
Ву:	_			
J. Steven Rizley				
General Manager and VP				
Photo of Assuma				
State of Arizona) County of Maricopa)				
County is the copy of				
Subscribed and sworn to before me thisday				
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 prejoint 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.
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 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 moderns 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 PCC and established franchise communeuts.
- 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 over10% 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 Programs

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:

- 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 cobranded 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 matually 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 brochares 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;
- (1) 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

his de 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 seeme 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]

- 28 -

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 daysafter 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: Sent:

Trickey, Linda (CCI-Allanta)

Wednesday, March 12, 2003 3:29 PM

To:

Arthurs, Tisha (CCI-Phoenix), Kelley, Mary (CCI-Phoenix)

Subject:

RE: Cox Agreements

Redacted

----Original Message----

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

c< file: AGM COX 4 cox res finaldraft (03-10-03).doc >> << File: AGM cox comm]
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 ACM cox comm 1 finaldraft (1-21-03)-AGM cox comm 3 finaldraft (03-10-03).doc
>> A << File: LTC JM 3 Non-ExclusiveLicenseAgreement(Vistancia)-Commercial (03-04-03).doc
>> M COX 4 cox res finaldraft (03-10-03).doc> < <AGM cox comm 3
finaldraft (03-10-03).doc> <AGM cox comm 3</pre> 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

> ----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>> > <<AGM COX 2 cox res finaldraft CLEAN
(1-28-03)-AGM COX 4 cox res finaldraft (03-10-03).doc>> > <<AUVComparison 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>> > <<LIC_JM 3 Non-LicenseAgreement (Vistancia) -Residential (03-04-03).doc>> > <<LIC-JM 3 Non-LicenseAgreement (Vistancia) -Residential (03-04-03).doc>> > <<LIC-JM 3 Non-LicenseAgreement (Vistancia) -Residential (03-04-03).doc>> > <<LIC-JM 3 Non-Lic

2

From:

Mark Hammons [mhammons@sunbeltholdings.com]

Sent:

Tuesday, March 11, 2003 1:30 PM

To:

Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)

Ce

Curt Smith

Subject:

FW: Cox Agreements











AGM_coxc_comm_3 DVComparison_AG DVComparison_AG LIC_IM_3 LIC_IM_3 IN res_finaldraft ... finaldraft (03-... M_COX_2 cox_res. M_cox_comm_1 fi...n-ExclusiveLicenseA

网络

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

Thanks

Mark

-Original Message-

From:

Curt Smith

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>>

Shea Sunbelt Pleasant Point, LLC & COXCOM, INC. CO-MARKETING AGREEMENT

This <u>CO-MARKETING</u> AGREEMENT FOR TECHNOLOGY FACILITIES AND COMMUNICATION SERVICES "CMA" ("CMA") is entered into this __day of ____, 2003 between COXCOM, INC., a Delaware corporation d/b/s COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of its officiates itself and its Affidiates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Acress 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 1.180 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, 2011, 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 amenines in the Govered-Property <u>Development</u>. Master Developer will pay Cox a capital contribution of \$2,000,000.003.000,000.001 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developers <u>Developer's payment</u> will be made in four equal payments of \$500,000.00750,000.00 at the beginning of each quarter beginning January <u>April</u> 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 <u>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 Marisona County, State of Arizona in connection with this CMA (the "Non-Exclusive License"). On will be granted a non-exclusive license by a-Shea-Homesthe 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, <u>residents of single family-residents</u> and multi-family units upon the occupancy of the first unit built.</u>
- E. Whereas the Master Developer has subjected the Covered PropertyalLor 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 Markopa County, state State of Arizona as Instrument Number 2002— (the "CSER") and the Non-Enclosive 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.
- 11. Whereas the Master Developer anticipates transferring <u>development parcels within (or other portions of Vistancia) the Development</u> 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.
- H. Whereas this CMA is intended by the parties to apply only to, and this CMA thall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFIs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment renter, or other non-residential nurpose.

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:

 - (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 subscribes 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 "Gable Television Services" shall mean and references and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as thefined 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.
 - (1) "LMA" 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 <u>Development</u> in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (b) "Cummon 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, pravided or to be provided to or within Vistancia
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (L) "Covered Property" shall mean the Development.
- (h) "Cox" means CoxCom, Inc., a Delaware corporation d'bla Cox Communications Phoenix, and its permitted successors and assigns.
- (f) (rs)-"CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, stateState of Arizona, as Instrument Number —— 2003- as amended from time to time.
- (m) (n)-"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 moderns, 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 Maricupa 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 <u>Exhibit C formarketing for marketing</u> the Communication Services at Vistancia.
- (q) "Master Developer" means Sheaf Sunbelt Pleasant Point-L.L.C., on Arizona, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (1) "MFU" means residential buildings within the <u>Development</u> containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "Neighborhood Builder" means any person or entiry-thin engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer ofto 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 Gip-of-Peoria Recorder for Maricona County, Arizona, pertaining to real property.
- (u) "Home Owners Association" means the Vistancia Communityeach Village Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Serviturles, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant)cor, 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 Vistanciathe Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developering 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 Vistoseiathe Development.

- (y) "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 Platsrecorded 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 Vistaneiathe 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 Vistaneiathe Development or the applicable portion thereof; provided, however, that any Plat as described berein shall be subject to the CSER and the Non-Exclusive License.
- (x) (w)-"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.
- (x)-"Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in <u>Exhibit D</u>, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (2) (y)-"SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (a2)(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 councet panels, fiber/II 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)(so)-"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 (f) as to each Village Association, the date an which the Class R 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, (fi) as to Vistancia Maintenance Corporation, the date on which Master Developer's voltage control of Vistancia Maintenance Corporation in Master Developer's conactive as Declaration under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (fii) 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 anasuch Home Owners Association, on which Master Developer and restrictions control of over such Home Owners Association (in Master Developer's capacity as declarant's voting control of over 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, excumstances 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 faikne 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 emption, 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.
- (ee) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (f) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (pp) (dd)-"Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.
- (hh) "Yistancia 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 InitialInitial 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 Pareal-Plat, the recording of Declarations (including, without limitation, the (i)Master Declaration of Covenants, Conditions and Restrictions, Assessments, Changes, Servicedes, Lieus, Reservations and Easterments for each Mountain View Village, and (iii), the Village Declarations, 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 Easternett 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 Acress Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all eyents 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 ficense and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (b) (b) Neither the construction and installation nor the repair, replacement and maintenance of such-Technology Facilines 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.
 - (e) fift Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easementany rights pranted under the Non-Exclusive License have the right to enter upon-(by virtue of the easements-reserved hereunder) Non-Exclusive License ar otherwise) man any portion of a lot on which aseam 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 Stanues §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 rightony rights granted under the Non-Exclusive License have the right to enter (by virtue of the licenses, easements or use rights reserved herevederNon-Exclusive Licenses ar 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 Eastity or any of itstheir respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not crode or lessen the rights conveyed under the CSER or the Non-Exclusive License.
 - (f) (r) Coa 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_thix CMA and the Non-Exclusive License.
- (c) 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 Eshibit 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 Eshibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

- (d) (h) 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 this-subsection 3(bc).
- (c) (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 thethis CMA and/or the Non-Exclusive License.
- 1. Communication Services & Technology Facilities Obligations of Cox.
 - (2) 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. "MFI/s" or MDI/s at VisianciaMFI/s in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistanciathe 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 Vistanciathe 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 Vistoneiathe 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 ogreement two (2) million dollarsthis 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 Visioneia 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 Dovelopers 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 Vistanciathe Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, os-(ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation of Vistancia from Master 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 mithin the Development from Master Developer are no longer operating model homes in Vistanciathe Development. The compensation as set forth in Enhibit 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 Mainterance Corporation, Cox will continue to pay Master Developer the above mentioned marketing—compensationMarketing Compensation. Upon the termover—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 Vistaneinthe <u>Development</u> 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 <u>Exhibit E</u>:
 - (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 <u>Telephone Service</u> 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 Teleom, LUC; 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) Con 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 Vistanciathe 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 Fwethe, sum of Three Million and No(100 Dollars, (\$3,000,000,00) as provided in

subsection 4(b) [payable <u>pursuant to subsection 4(b)</u> in four equal payments of \$500,000 installments of Seven Hundred Fifty Thousand and No(100 Dollars (\$750,600,00) 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 Trilagy).

- (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 Visioneinthe 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 Vistanciothe 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 Vistenoisthe 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 Visioneiathe <u>Development</u> 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 <u>Section 11</u>, 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 Peovia 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.
- (1) 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-er, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manuser for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, 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:
 - (a) (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;
 - (e) fin Cox High Speed Internet Densa. 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 conter;
 - (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 matual 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 Con. During the Terra of this CMA

- 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 Vistaneiathe Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistantia 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 Yistancia 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 (hij) relating to model homes of each Neighborhood Builder to whom is sells any portion of Visconciathe 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 berein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranct 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 lost 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: (2) provide for marketing compensation which, in the apprepate, 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 fincinding, 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 Jesser 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 Coa.

- (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 <u>Exhibit G</u>, 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 scrow 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 discluse 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.
- 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 <u>Enhibit B</u> 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 are its hest 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 Vistanesathe 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 stecking to enforce any such Neighborhood Builder obligation. As to property within Vistaneiathe 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 contary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder any provision in Exhibit A, and in no event shall a breach or default by Master Developer under this CMA.

- (c) Cooperation in use<u>like</u> of Technology Easements and similar-use right-oreas<u>Similar Use Right</u>
 <u>Areas</u>. 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 Cux to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales-Centerscales 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.
- (c) 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 solety 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 for the applicable Neighborhood Builder, if it instalts the Additional Trenchine) 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 for 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
- 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 Neighborbood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistaneiathe 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 Facilities, within any trench constructed by Master Developer, or such Neighborhood Builders. 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 marcanty, 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 after the same;
 - (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 MFIIs 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 bufked services at discounted rates, if allowed by law, or an offering of consideration to the purchases/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchases/ 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 purchases/ developer.
- 8. Insurance; Indemnification; Waiver of Subrogation.
 - (a) Required Insurance. During the Term of the CMA, Cox and Master Developes each shall maintain insurance satisfying the requirements of <u>Exhibit F</u>.
 - (b) Damage or Destruction by Master Developer. In the event that Master Developer or theirs agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Con 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 theirs 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 expirement of any such person or entity or any loss of income or revenue resulting thereform.

(c) Waiver of Subrogation. Norwithstanding 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 pruperty 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 hereinder 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).

). 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 Arizono 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 the rein.
 - (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 Couflict. 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 covernants 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 1.aw. 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 economication services <u>Communication Services</u> within <u>Vistancia</u> that <u>are</u> comparable to Cox's preferred provider status with respect to the Communication Services on any parcel of the property <u>hereunder</u>, 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 not 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 coverants 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 husiness in the State of Arizona, has the requisite power and all required governmental approvals to earry on its present and proposals for earry on its present and proposal 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 poverning instruments of Access Entity or any other agreements or instruments to which it is party or by which it is housed; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, waterantes, 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 he 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 hoppledge 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 heremoder, prior to the Agreement Date.

10. Default and Remedies.

- (a) Events of Default. Except in case of Unavoidable Delay fin which event the time for performance bereinder 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 performe 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 deligently 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 <u>Section 12</u>, together with interest thereon from the date such amount was due until paid at the rate of 12% per amount.
- (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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.

- (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 feater in the extent 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.
 - (2) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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 Licenselicense from City of Peonia 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 Determin ing an named 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 Liceuse 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 easences acquired by Cox, or to which Cox was entitled, hereunder or bereto, and Platted Externent Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Can 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 essentents Platted Eastment Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of thethis CMA shall terminate or restrict in any way the rights that Cox has or may have under isothe 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-Exchosive 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 Pacifities 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 some or more non-exclusive license agreement(s) on terms that are the same as or different <u>Irom the</u> 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 continuing to continue subscribing to Con's Communications Services.
- (n) 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 ways, and/or with a Neighborbood 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 prudest 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, <u>Vistancia Maintenance Corporation</u>, 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 "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 matually 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 exparte 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 lifteen (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 sentlement 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 notikely 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 shalf each bear lifty 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 expens 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 shouldshall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jursidiction.

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 sele 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 thea 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 aud/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 the Acress Entity or to any other entity that controls the unilinguisity 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 for other legal authority of Cox) to provide Cable Television ServeesServices 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 Con'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 tand 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 disbutsements (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 normitted by law.
- (c) 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 fand of the Access Entity and Coxt 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 beteto toward, any person or entity not a party to this CMA.
- (i) Waiver. No waives 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.
- (1) Additional Documents. Each party hereto shall execute and deliver an such additional instruments as may romfirom 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 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 twas 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 m all parts of this CMA shall in all cases be construed sumply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties here to 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 construct 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 emmaning 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 frum 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 himiting 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. Visioneis's-Master Developer-and/or-Building-Owner agrees to execute and record documents which will establisheestablish 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 CMA for the provision of Technology Facilities and Communication Service Co. Marketing Agreement as of the date first written above.

'Master Developer "-Sheo Sunbelt Pleasant Point. L LC		SHEA SUNBELT PLEASANT POINT, LLC. a Delaware limited liability company	
Address:	6720 N. Scottsdale Road Suite 160 Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419	By: Shea Homes Southwest, Inc., an Arizona corporation, its Member By:	
	and required copy to 8800 N. Gainey Center Drive Suite 370	By: Sunbelt Pleasant Point Investors, 1.1.C. an Arizona limited liability company, its Member	
	Scousdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841	By: Symbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager	
		By: Sunbelt Haldings Management Inc., an Arizona corporation, its General	
		Pariner	
		Br:	
		Curtis F. Smith, its Chief Operating Officer	
	(COM, INC., a Delaware corporation, a COX COMMUNICATIONS Places is	COXCOM, INC., a Delamare corporation, driva COX COMMUNICATIONS Phoenix	
Address:	20401 N. 29th Avenue	Rv	

Phoenix, AZ 85719

J. Steven Rizley General Manager and VP

'Access Entity"		VISTANCIA COMMUNICATIONS, L.L.C., 20	
*		Arizona limited liability company	
Address:	6720 N. Scottsdale Road		
	Suite 160	By: Shea Sunbeit Pleasant Point, LLC, a Delaware	
	Scottsdale, AZ 85253	limited fiability company, its Manager	
	Phone: (480) 995-0770	<u>-</u>	
	Facsimile: (480) 905-1419	By: Shea Homes Southwest, Inc., an Arizona	
		corporation, its Member	
	and required copy to	- COLONIA CALLANDA	
	8899 N. Gainey Center Drive		
	Suite 370	D	
		<u>Br.</u>	
	Scottsdale, AZ, 85258		
	Phone: (488) 367-7680		
	Facsimile: (480) 367-2841	By: Sunbelt Pleasant Point Investors, L.L.C.	
		<u> 20</u>	
		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.	
		ils	
		General Partner	
		- Containmen	
		D	
		By:	
		Curtis E. Smith. its Chief	
		Operating Officer	

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

- (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 Vistancio 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 accessary 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 A
Page 1

EXHIBIT B

Technology Facilities

Feelmology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-bealing fiber sing 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.
- Cable Television Services. Meet or exceed industry standards for programming quantity, and signal
 quality, of analog and digital cable programming.
- 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 incursious. Data moderns 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 minutaum service standards.

EXHIBIT B Page 1

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 Con 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:

- 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.
- A minimum of one month advertising in a local homebuilded 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 cobranded with Cox and Master developer trade names in the trademarke.
- 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 trunketing 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;

Page I

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- 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;
- 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;
- (1) 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:
 - 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;
 - 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;
 - 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 potice of pending escrow closings

EXHIBIT C Page 2

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 construction.

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 Port 76 of Title 45 CFR (76.5(11), 76.802).

EXHUBIT D Page 1

EXHIBIT E

Technology & Service Standards

- 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
 - (c) Data Network Standards.
- 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 moderns 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, 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 on 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 Page 1

EXHIBIT F

lasurance Requirements

Chroughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- L. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodity and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the apprepate a minimum combined single limit liability protection of Two Millian 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 endursement 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 husiness 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 (18) days prior to the expiration of any insurance coverage required to be maintained beccunder, that insurance coverage required beccunder is in force during the Term of this Agreement.

EXHIBIT F
Page 1

EXHIBIT G

Marketing Compensation Schedule

Con will pay Master Developer the sum of Five Hundred Thousand and Nol100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFI] within the Village A portion of the Development is connected to any Communication Service provided by Con.

Can will pay Master Developer the sam 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 MFII within the Trilogy portion of the Development is connected to any Communication Service provided by Con.

Con 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 daysafterdays 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 payer-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payou
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 G Page 1

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 (bereinafter "Cox") on behalf of itself and its Affiliates (as bereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona firmined liability company (bereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (bereinafter "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 Annequation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Manicopa 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 cahanced 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 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 besein 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 mirrors.

NOW, THEREFORE, in consideration of the manual 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

- 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" useans 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 unitry 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.

- (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
- (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 sea-top hoxes, cable minderns, 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.
- (a) "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 <u>Exhibit C</u> 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 entiry 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 Marieopa 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 coverants, 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) "Plas" 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 Pla(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 casement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public of 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 <u>Exhibit D</u>, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (2) "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 testrictions 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 firmitation, 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, muclear 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, langation challenging the validity or enforceability of this CMA, change in law, regulation or policy probibiting 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 having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique 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 Pooria, Arizona, as described in
- (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 (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 Magss 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 transferce 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 Eastment Areas which shall be subject to the rights gramed to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which casements, 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 definication shall not crode or lessen the rights conveyed under the CSER or the Non-Exclusive License.
- (v) Cox shall not entreasonably interfere with the use of the Planted 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 occurist with Cox in the Planted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Planted 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 excrow to be sold as of the Agreenient Date, Master Developer agrees to use its diffigunt, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in <u>subsection 3(c)</u>.
- (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 track 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 non 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 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 Tumover 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 excrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in <u>Exhibit E</u>:
 - (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 Teleom, 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 emitted 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 limital 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 Fifly 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 Licease to install in such trenches), which joint treuches 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 <u>Entirbit D</u>) for all applicable SFRs, MiPUs, 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. Con 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 Pacilities 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 <u>Section 11</u>, 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, tental or purchase of associated Customer Premises Equipment and installation or bookup 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.
- (1) 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.

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- (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 expresser.
 - (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 Neighburhood 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 house (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighbothood 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 Cos. 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 Developes 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 <u>Enhibit G</u> (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 <u>Exhibit G</u> (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 <u>Exhibit C</u>.
- (c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in <u>Exhibit G</u>, 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 Coropensation, 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 retimburse 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 <u>Exhibit A</u> 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 escrew 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 <u>Exhibit A</u>. 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 <u>Exhibit A</u> and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in <u>Exhibit A</u> 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
- (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 Buildes'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 escrives 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 parted 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 facilities 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 tea (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 neighborhood 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.
- (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 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 eachange for exclusive marketing rights. Developer shall use its reasonable efforts to include Coa in

discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Coa 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 Developes 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 <u>subsection (a)</u>, 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 <u>subsections (b) and (c)</u> 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 deriment of the other party any loss or liability which would have been covered by property insurance and liability insurance in the 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 <u>subsections</u> (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 berein 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 hitigation 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'spreferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.
- (b) By Cox. Cox bereby 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 coter 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 bereby 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 coverants 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

- (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, not 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 <u>Section 11</u> 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 sura 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 bereunder (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 <u>Section 12</u>, together with interest thereon from the date such amount was due until paid at the rate of 12% per armun.
- (c) Remedies for Performance Default. In the event of a Performance Default, the mondefaulting 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 <u>Section 12</u>. 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 <u>Section 12</u>.

- (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 <u>Section</u> 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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section</u> 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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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 of 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 husiness 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 unuselved 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 resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer's hall 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 tesidents 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 nzications 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, thus 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, farnishings 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, farnishings 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 "Vistanciauet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia uct" 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 exparte 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 w 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

- (d) Costs & Fees. Masser 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 expents 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 not 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 <u>subsections (b) or (c)</u>.
- (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 beneunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which bas, 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 "Affihiate"); (ii) to any entity with which Cox and/or any Affihiate 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 or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox or any Affiliate.

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 in he 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 bereunder).
- (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 counset), 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 decired the nonrevailing 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 curcumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (c) 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 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 employer.

- (h) Taird 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 obliget 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.
- (I) 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 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 "subsectious" 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 mother 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 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. Fach party acknowledges and agrees that any and all information emunating 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 manthorized 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 casement 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.

SHEA SUNBELT PLEASANT POINT, LLC, a

"Master Developer"

		Delaware himted hability company
Address:	6720 N. Scottsdale Road	
	Suite 160	By: Shea Homes Southwest, Inc., an Arizona
	Scottsdale, AZ 85253	corporation, its Member
	Phone: (480) 905-0770	
	Facsimile: (480) 905-1419	
	1 200mmc. (100) 303-1113	Ву:
•	and required copy to	lte:
		m.
	8800 N. Gainey Center Drive Suite 370	D C 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
		By: Sunbelt Pleasant Point Investors, L.L.C., an
	Sconsdale, AZ. 85258 Phone: (480) 367-7600	Arizona limited liability company, its Member
	Facsimile: (480) 367-2841	By: Sunbelt PP, LLLP, an Arizona limited
	Pacsaruse: (480) 301-1841	liability limited parmership, its Manager
		tizonità tamica batmeranto' ur tapurales
		By: Sumbelt Holdings Management, In
		an Azizona corporation, its Genera
		Partner
		Ву:
•		Curtis E. Smith, its Chief
		Operating Officer
"Cox"		COXCOM, INC., a Delaware corporation,
		d/b/a COX COMMUNICATIONS Phoenix
Address:	20401 N. 29th Avenue	
	Phoenix, AZ 85719	
•		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: Sunbett PP, LLLP, an Arizona limited liability limited partnership, its Manager

> > By: Sumbelt 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 dbba Cox Communications Phoenin ("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 bereby 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 treaches 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 Moster 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 Page 1

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

1) Network

- 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 shodow 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.
- Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 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 moderns 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 commutments.
- 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 tessen 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 B Page 1

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: Master Developer, which will include, but not be limited to the following: co-branded with Cox and Master Developer trade names and trademarks. 21 Cox digital logo and mutually agreed upon content by both Cox and Master Developer.

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and

- 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
- A minimum of one month advertising in a local homebuilder/ developer publication which will include the
- 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 cobranded with Cox and Master developer trade names in the
- 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.
- 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.
 - provide literature to the sales office highlighting Cox services (a)
 - 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 brochares, packages, advertisements and other collateral materials;
 - cooperate to create and use co-branded promotional and sales brochures, packages and other (c) 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 Page 1

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents:
- highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- provide prospective buyess 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;
- 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;
- (1) 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 waster 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;
 - 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.
 - (?) 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 SE). 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 convertee.

360-degree comp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or bard 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).

EXPIBIT D Page 1

EXHIBIT E

Technology & Service Standards

- 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")
 - (2) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corpuration Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Belleore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
- 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 moderns 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 sent 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 Page 1

EXHIBIT F

Insurance Requirements

Phroughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- 1. <u>Comprehensive Liability</u>. 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.
- 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. <u>Automobile Liability</u>. 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 D. 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 F Page 1

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 (5500,000.00) 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 mouthly 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	Payou
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 G Page 1

Sbc2 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 beteinafter 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, LLC., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in <u>Appendix A</u> attached to the CSER and incorporated therein by reference, which <u>Appendix A</u> 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 Cm. 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 nonexclusive 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:

ACREEMENT

1. Definitions.

The following terms shall have the following meanings for all purposes under this Agreement:

- "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 coancets a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abusting 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 testicitions. 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.

- "Master Developer" means Shea Sumbelt 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, relecom 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.
- (0) "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 bereafter 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 transcrivers, 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, kess of power or utilistics, 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 to fishue 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
- (7) "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 "linitial 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 <u>Sections 10 and 12</u> 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 Essenent 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 Emity 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 crode 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, sturm 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.
 - (2) 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 <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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 <u>subsection 6(b)</u>) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (j) the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>subsection 6(a)</u> and the catchisive rights 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 <u>subsection 4(a)</u> and all exclusive rights granted to Cox under <u>Section 5</u> 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 <u>Enhibit C</u>.
 - (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 metopolitan statistical area of the community by substantially similar provides of the services included in the term "Communication Services" become communically 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 Teleorn, 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 nu 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 patent, 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.
 - 0 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 art 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 authoretion 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 form 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 <u>Section 11</u>, 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 adjaccot to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) Bitting 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.

- 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 Premotion 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 provides 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 intranct 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.
- Technology Facilities Cooperation & Coordination by Master Developer.
 - (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Conin the design, permitting, construction and installation of the Technology Facilities described in <u>Exhibit B</u> 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 <u>Exhibit A</u> 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 extens 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

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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 <u>Exhibit A</u>, and in no event shall a breach or default by an Owner of its obligations under any provision in <u>Exhibit A</u> 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 crecked 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.

Technology Facilities Cooperation & Coordination by Cox.

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, (ia) 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, teaant 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 Coa 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 Vixtancia 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 to develope the 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:
 - 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 bereunder, 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 <u>Section 8</u>) 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 Pencentage" 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), transit(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 abscribing 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.

Penetration Percentage		Applicable Percentage
		<u>For</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 berein, 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 desured 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 stated 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 Sobrogation, 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 easualty insurance that is required to be carried by each party hereto pursuant to <u>subsection (a)</u>, notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such purty has elected to be self-insured in any amount or to any entent, except with respect to the reimbursement provisions of <u>subsections (b) and (c)</u> 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 <u>subsections (b) and (c)</u>.
- (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

- (2) 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 requised 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 lingation served on Master Developer which challenges Master Developer's ambority 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 Vistaocia 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 Coollict. 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 assening 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.
- (e) 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 covernous 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 berequider, 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 <u>Section 11</u> 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 <u>Section 12</u>, 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 office against the annum 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 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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (b) 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 <u>Section 11</u> 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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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'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:
 - 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
- (lii) 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 "Vistancianet" from the property owned by Cox.

Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain proint and expeditious resolution of disputes hereunder. In the event of any dispute, controversy or claim of any kind or nature arising under or in correction 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.
- 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.
- (e) 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 <u>subsections (b) or (c)</u>.
- **(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 assess of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferce 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 assignce signs and delivers to Master Developer a document in which the assignce assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignce 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 berein, 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 winces fees and disbutsements (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 shaft 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.
- (b) 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 sequiring 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 hereusder, 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.
- (h) 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.
- (I) Additional Documents. Each party hereto shall execute and deliver an such additional instruments as may from time to time be necessary, reasonable audior 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 incended 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.
- (e) 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 coursel, 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 construct against the party preparing it, and instead other rules of interpretation and construction shall be unlived.

- (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 ernanating 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 pacty, 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 case 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 bereafter 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 bereby, have executed this Property Access Agreement as of the date first written above.

SHEA SUNBELT PLEASANT POINT, LLC, a Delaware furnied liability company			ELT PLEASANT POINT, LLC, 2 ed liability company	Coxcom Inc., a Delaware corporation, d/b/a Cox Communications Phoenix			
Ву:	corp		nes Southwest, Inc., an Arizona on, its Member	By: J. Steven Rizley General Manager and VP			
	Ву:	lts:	•	Address:	2095 West Pinnacle Peak Road Suite 110		
By:	y: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Member			Phoenix, AZ 85027 Phone: (623)322-7137 Facsimile: (623) 322-7918			
	By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager			and required copy to			
		By:	Sumbelt Holdings Management, Inc., an Arizona corporation, its General Partner		Atlanta, GA 30319 Atln: General Counsel		
			By:Curtis E. Smith, its Chief Operating Officer		<u>.</u> .		

6720 N. Scottsdale Road Suite 160

and required copy to 8800 N. Gainey Center Drive

Scottsdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

Scottsdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419

Suite 370

Address:

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

By: Shea Sumbelt Pleasant Point, LLC, a Delaware limited fiability company, its Manager

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

By: _____

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

> > > By:
> > > Cartis 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 Scattsdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

EXHIBIT A

Contract Prevision - 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) termain 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 Consumunication 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);
- (c) 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 treaches 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
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 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 moderns shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 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

- 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 Peoris 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) Belicore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Dara Network Standards.
- 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 custorize-owned equipment. In no evens 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. <u>Comprehensive Liability</u>. 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.
- 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.
- 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 baving 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

MEMORANDUM

To:

Linda Trickey, Mary Kelley, and Tisha Arthurs

CC:

Cun 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;
- 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
- 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 act 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 I(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.

grik Hawell

Page [PAGE]

"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 sule 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.

tifel Name R

Page (PAGE.)

Vistancia

Page 1 of 1

From: Lesa J. Storcy [Istorcy@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.

Lesa J. Storey
Storey & Burnham FLC
3630 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>>

LT-13

4-7-03

Kelley, Mary (CCI-Phoenix)
From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, March 27, 2003 3:31 PM
To: 'csmith@sunbeltholdings.com'
Cc: Drake, Paul (CCI-Phoenix); Trickey, Linda (CCI-Allanta)
Subject: Final Redline Commercial Vistancia Agreement

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 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

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Vistancia

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 Phoenia, on behalf of itself and its Alfifiates (as hereinafter defined in this Agreement) ("Cox"), located at 2010 North 29th Avenue, 2005. West Pinnacle Peak Road, Suite 14th Phoenia, AZ 85027, Shea Sunbolt Pleasart Point, LL.C., a Delaware limited liability company ("Master Developer"), located at 6720 N. Sconsdoke Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, LL.C., an Arizona limited liability company ("Access Emity"). 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 Americation 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 experise 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 "CSFR")
- E. Whereas the Master Developer has founed the Access Entity for the purposes of holding the right to gram 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

Definitions.

011

The following terms shall have the following meanings for all purposes under this Agreement:

- "Access Emity" -means Vistancia Communications, L.L.C., an Arizona limited fiability company, its successors and assigns,:
- (b) "Agreement Date" means the date first see forth in this Agreement.
- "Backbone Conduit" means relecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-ofway 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 Rackbone 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.
- "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, muhifamily 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 cemes, and/or industrial purpose(s).
- "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.
- "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.
- "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

 Natural Filters France Red in Section 10 1-1-1-1 network

 "Local Exchange Carrier" means the local telephone company, which can be either a Bell
- COM Exchange Carrier means the rocks reciprosed company, e.g. Qwest, or an independent, which provides local telephone transmission Chr service. יון ועלי

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"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 Maintena Corporation.

- M Master Developer means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- "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, reconnectances for internet connectivity, and ties and charges for providing equipment to any termine 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 concumental 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.
- (n) O "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Emity 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.
- (b) V "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 planed tot for the purpose of development and construction
 of one or more Buildings thereon, and such person or entity's successors and assigns.
- fg) ("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, partel 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) 5 Vistancia" means the approximately 7.100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (5) 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 inserface units, conduit, lines, fiber, wires, cable, pipes, skeeves, pads, cross connect panels, fiber/Ti 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.
- (1) **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.
- (4) V-Telephone Service' shall means local and long distance telephone service provided by Con through one or more affiliates or third parties. Telephone-Service (local) and Telephone-Se

- (1) 1) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, eincurnatances 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 stides, 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, régulatory 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) Y "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Village Declaration, each as amended from time to time
- (vistancia Maintenance Corporation* means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

Z. Term

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. As 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 in 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."

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:

- 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
- During the Development Process, the Master Developer shall establish and delineate Planed 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 defineate areas in which easements, licenses or similar rights may be gramed 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 crode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer and Coa acknowledge and agree that the intent of this section 3 and the Non-Exclusive License is to provide Cox with physically continuine 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, peroctual, imm-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 und/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights,
- 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 nonexclusive 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-
- 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.
- Communication Services & Technology Facilities Obligations of Cox.

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Preferred Right to Offer Communication Services. During the Term of this Agreement, Cox (a) 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, remains 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 Buildiags.

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 gramed 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 Visiancia 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.

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Without limiting the generality of the foregoing, Con specifically agrees and acknowledges that (i) the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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 tand on which is is located, and (ii) all preferred rights granted to Cox under <u>subsection 4(a)</u> and all exclusive rights granted to Cox under <u>Section 5</u> 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) VideoCable 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 authorita. 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 with offer future 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 Teleom, 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, Conshall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Conshall 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, tenam or other occupant of a Building upon initial occupancy of such Building.

- Design & Installation Conditions. Con 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 Cux'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 few 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 tooms, 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, qualityl standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) Ownership and Maintenance. Con 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 feave 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.

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- (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.
- Exclusive Marketing Rights. During the Term of this Agreement, Con 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 Coathe exclusive right to marker 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 emerinto 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 communication pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or geneway) other than Cox High Speed Insernet (residential or commercial).
 - (d) Most-Favared-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 to 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 fork in Section 8 tincluding, 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 lesses quality than is being offered by Cox pursuant to this CMA-(collectively, the Most Favared Nation Rights).

Cox, Moster Developer and the Access Entity acknowledge and agree that the <u>rights in this section</u>
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 Enhibit 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-us-best-efforts in-include provisions in substantially the four of Ethibit 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 Con 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 enected 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.
 - 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 treaching 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 Treaching) 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.

- Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master (2) 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 followings: 4)-permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), -anil/or 2) permit such Owner, tenunt or other necupa iction and/or materials on behalf of Cox and thereafter office the amounts so advanced against fees payable to Con for Communication Services provided to the Building: If an Owner, senant or other occupant chooses the fina option (and such option is itted under the terms of the CSER), thenin 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 Visiancia 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 witing 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 to 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 mokes 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:
 - 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 thiring the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of annagements 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 purchases/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchases/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchases/developer.
- 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.

Penetration Percentage	Applicable Percentage Fee
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 antibutable to that Qualifying Building. If the Penetration Percentage decreases then Master Developer shall be paid the Applicable Percentage Fee, if any, curresponding 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 emittes 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 relectorimunications 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 Precentage 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 <u>Exhibit D</u>.
 - (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 Coa in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Coa 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 andequate amount thereof) in licu 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, saits, 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 Con 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 covernants of Master Developer under this Agreement, the executive management of Master Developer as no knowledge of any written nutice 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:
 - 6) Organization and Authority. Cox is a duly organized enromation 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 ficenses 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 berein 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 largation 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:
 - Organization and Authority. Access Entiry 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 Entiry provided for herein and thesein.
 - (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 Agreemen Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive transagement 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) Campliance 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 Coa's preferred provider status with respect to the Communication Services bereinder, prior to the Agreement Date.

Default and Remedies

(a) Events of Default. Except in case of Unavoidable Delay (in which event the time for performance herounder 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 <u>Section 11</u> 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 tlelinquent.
- (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 prosecuse 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 <u>Section 12</u>, 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 case on behalf of the defaulting party any default becomeder, and to obtain reimbursement from the defaulting party for the cost of such case, together with interest thereon from the date such case 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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (b) No Consequential Darmages. 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 porty 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 <u>Section 2</u> or termination as permined under <u>Section 10</u> this Agreement may be terminated or partially terminated under the following circumstances:

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- (i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide Video Cible 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.
- Master Developer Determination. If Master Developer determines that Cox has failed (m) to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Cuble 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 1ft 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
- (b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Coa and Master Developer shall be as follows:
 - 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 rermination 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 Planed 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 Liceuse shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide unication 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) Intranct Disconnection. Con shall disconnect from the Con 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 (3) 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 pasties 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 shalt 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 notters 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 modiation 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 lifty 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 winnesses; 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 (6fl) 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 <u>subsections (b) or (c)</u>.
- (b) Master Developer. Moster Developer shall have the right to assign its right, title and interest (and to be concurrently referred of related liabilities assigned in writing), without Con'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 assignce assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignce has emered 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 refieved 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 granied to Cox bereunder 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 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 trade in writing executed by both Master Developer and Cux (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 onderstanding between Master Developer, the Access Entity and Coa with respect to the subject matter covered thereby and supersed all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Coa 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 disbutsconents (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 decreed 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) Coverning Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (I) 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 dremed 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 ventures 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.
- (I) 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 thring the Term.
- (n) Meaning of Certain Terms. When the content 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 Cot unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "governmental and quasi-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 construct against the porty preparing it, and instead other rules of interpretation and construction shall be milited.
- (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 knows to the recipient party as of the date of this Agreement as shows 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 Coa'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, imending 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	Coscom Inc., a Delaware corporation, d/b/a Cox Communications Phoenix
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member	By: J. Steven Rizley
By: Is:	General Manager and VP Address: 2040195-West Prinnacle Peak Road(North
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	29th Avenue Suite-110 Phoenia, AZ 85027 Phone: (623) 322-7137 Facsimile: (623) 322-7918
By. Sumbelt Holdings Management, Inc., an Arizona corporation, its General Partner	and required copy to 1400 Lake Hearn Drive Atlanta, GA 30319 Atta: General Counsel
By:	

6720 N. Scousdale Road

Scousdale, AZ 85253 Phone: (480) 905-0770 Facsimile: (480) 905-1419

and required copy to 8800 N. Gainey Center Drive

Scousdale, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

Suite 160

Suite 370

lddress:

VISTANCIA COMMUNICATIONS. L.L.C., an Arizona fimited 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: 4s:

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

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

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

By: Curtis E. Smith, its Chief Operating Officer

ddress:

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, lac., a Delaware corporation dibia Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereso (if any) that have been executed as of the date of this Agreement (soch 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 Coa ("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) munths 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 Visioncia being purchased by such Owner pursuant to the porticular 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
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital videoesble programming.
- 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 moderns shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 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

- Standards. Cos shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry beachmark 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 emities;
 - (b) Taniffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909):
 - (d) National Cable Television Association; and

- (e) Data Network Standards.
- Security. Data moderns 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 on remedies be less than those the subscriber is emitled 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. <u>Comprehensive Liability</u>. 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 I wo Million Dollars (\$2,000,000) per occurrence.
- 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.
- Automobile Liability. Automobile insurance on all vehicles owned or operated by pury 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. <u>General Provisions</u>. 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 dote 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

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

Shea Suabelt Pleasant Point, LLC A COXCOM, INC. CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT ("CMA") is entered into this __thr_of ____, 2003 between COXCOM, INC. a Delaware corporation d-b/a COX COMMUNICATIONS PHOENIX (hereinafter "Can") on behalf of itself and its Affiline, by hereinafter defined in this CMA). Viscosics Communications I.I.C. an Automa limited fabling company thereinafter "Access Entir") and Stee Sunded Pleasant Point, LLC. a Delaware funited liability company (hereinafter "Moster Ocyclopes").

RECTFALS

- A. Whereas the Master Developes is the bestelesial owner of and is developing Vistancia, a master planned oxiomamity of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizana ("Peoria") in accordance with that exists Development and Americation Agreement extented by Powis on October 3, 2001 and thereafter recorded in the official records of Masteropa Consery, Arizana, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approachs and entitlements referenced thereis and schoted thereto, as amended from Inner to time (the 'Octoberent').
- 8. Whereas the Master Hereloger desires to make available. Brough 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 agosphightly capital contribution of \$1,000,000,000 to the definer and Communication Services at the time of the first hance 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, activated expertise, and the function resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to exidents within Vistoria.
- D. Whereas pursuant to that certain Non-Exchange Locase Agramment to the executed by the Access Entity and Gus and recorded to the Differ of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive Locases"). Case will be pranted a numeractorize locase by the Access Entity to pure like Cable "Education Services to Vissances, and well also be greated the right works this same license to provide Internet Access Services and Telephone Services to Vissacia residents, including, without Brintation, residents of single Entitly and multi-family maits upon the occupance of the first multi-family.
- E. Whereas the Master Developer has subjected all we a pretion of the Development to coston casement and access restrictions to incidiate the provision of enhanced technological capabilities, including, but not kineted its these ensonest and access restrictions set fixed in the Continuo Services Entermosts and Restrictions, recorded in the Office of the Recorder to Maricepts Contry, State of Asiacota as Instrument Number 2003—___(the *CSER*)
- F. Whereas the Master Developer has homed the Access Finity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that bureful the residence of Victoria, including, but out limited to Communication Services.
- G. Wherear, the Access Early agrees to games Cox, the Non-Exchange License,

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- H. Whereas the Master Developer anticipates transferring development purcels within (or other purious of) the Development in Neighborhood Builders for the development of subdivisions (referred to lurisin as "subdivision purcels") and other sive nill seek the cooperation of Neighborhood Duilders in the unril ening and promotion of the Communication Services provided by Cost within Vistancia.
- 11. Whereas this CMA is intended by the puries to apply only to, and this CMA shall apply only to, cortain common area tracts owned by a House Owners Association or Vistancia Maintenance Corporation as horeinafter provided, the SFRs and the MFUs in the Perchaptent, and not to any property within the Development that is used far any enumerical actual, inclusival, complement center, or other non-residential number.

NOW, THEREFORE, is consideration of the methal covenants contained in this CMA, and other good and valuable consideration, the receipt and subspaces of which are beachy acknowledged. Master Developer, Access Embry and Cox agree as follows:

AGREEMENT

- 1. Beforeitures. The following terms shall have the following meanings for all purposes under this CMA:
 - (a) "Access Entity" means and refers to Vistancia Communications, 1,1 C, an Anizona limited liability commun. its processors and assisters.
 - (b) "Activation Ready" means all Yechnology facilities that are necessary to primide Communication Services to an STR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" skall wasn and refer to visits respect to any Person (i) any Person directly or indirectly controlling, wash elled by or under common control with such Person; (ii) any Person unning, or controlling five person (3° i) or more of the voling controlling for person (3° i) or more of the voling controlling for person who is an efficier, director, manager, general partner, trustee or holder of the person (5° i) or more of the voling accumilies or voling control of any Person described in closures (1) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA
 - (c) "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 effection or use of the video programming or other programming services.
 - (f) "CMA" ascens without only this Co-Marketing Agreement and one subsequent netticn intendments and supplements betto executed by Master Developer and Cox (and by Access Entity, by the extent any such assentances and supplements offer or relate by the obligations or agreements of Access Entity becaused.).
 - (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 muce Communication Services and or vality services.
 - (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Accusa Services, and Telephone Services, provided or to be provided to or within Vistancia

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- (s) "Commerces" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means Crection, Inc., a Delaware corporation of bia Cox Communications Phoenix, and its permitted monocours and assigns.
- (1) "CNER" means the Crammon Services Executions and Resolutions recorded to the Oblice of the Recorder for Musicopa County, State of Arizona, as Instrument Number 2003from time to time to time.
- (m) "Unaboner Premises Equipment" shall mean Con-avaned, leased or for cale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to including, but not limited to convertee or no-top boxes, cable medicus, digital andia receivers, remote control devices and signal autolifices.
- (n) "Declarations" shall mean and refer to the Moster Declaration, each Village Declaration, and each other declarations of coverants, evolutions, extensions and restrictions for the Development or any portion thereof us, or to be, examined in the office of the bisinaps County Recorder in accordance with the Master Becks asken and the applicable Village Pecksration and which burden the Development or any portions thereof, as each of the foregoing are amended from time to time.
- (a) "Internet Access (Services" means the high speed Internet occess 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" mems Shee Strabelt Pleasant Point, LLC, a Delaware finited hability compone, its successors and permitted assigns.
- (a) "MFTP means condented buildings writing the Development containing multiple family dwelling units for prechase, lease or real whether detached or attached.
- (s) "Neighborhood Builder" means any person or entire engaged in the business of constructing SFRs or Mi'Us for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted bits trithin the Development, for the propose of developing and construction of one or more SFRs or Mi-Us thereon.
- (i) "Official Records" areas the official records of the Recorder for Markeyo County, Arabona, pertaining to real property.
- (u) "Home Ownes s Assistation" means each Village Association, and any other homeowners or property owners, association that has as its mornhors the owners of SFRs or MFDs in all or any portion of the Development, and is established pursuant to a declaration of coronants, 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 oren tracts within all or any portion of the Development.
- (v) "Master Declaration" means that certain Declaration of Coverants. Conditions and Restrictions for Vistances to be recorded in the office of the Maricago Coops Regarder in Increment Number 2003. as amended from time to time, which among other things provide for the organization of Vistancia Maintenance Congrustion.

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- (w) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that stabilistics the Development and/or dedicate or create streets, routways or areas to be dedicated to public or private use, as each way, to succeed from time to time, which include sights of way for addication to Peoris or uther publical subdivision time to time, which include sights of way for applicable portion thereof, or a subdivision plat recorded by Master Development or the applicable portion thereof, or a subdivision plat recorded by Master Development or all the subdivision that the subdivision of the time that the subdivision of the time time the subdivision of the lamber to the development and which exabilities, among other things, streets and a rights of usy (a bick counced to the major arterial streets and rights of vay established outer Plat(s) previously recorded) for dedication to private we and or for dedication to Provise or other political subdivision with justification over the Development or the applicable partial thereof, provided however, that any Plat as described becaused shall be subject to the CCFR and the Non-Exclusive License.
- (x) "Third Eastmon Area" shall mean and refer to all of the drainings, mility and aminor server ensurement area designated as D.D. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.
- (*) "Free Wise Specifications," means there againstantions for installation of secrets using, makets and trian in SFRs and MFUs as set forth in <u>Exhibit 19</u>, that enable Communication Services to be properly delivered to Cox Costoner Premises Equipment.
- (z) "SFR" means a single family detached or attached residence within the Development that is det eleged for rate, including a condomination on travialment.
- (as) Technology Facilities' means all facilities including without limitation on-one and off-site equipment installed for and or need in the distribution of Communication Services by Core to Vistancia, including but not limited to equipment entirets, network interface units conclud, lines, liber, mines, caller pipes, shortes, pods, practs caused punchs liber II interfaces, exhibit pines and ourds, notices bridgers, fiber transcervers test equipment power interfaces, extract dup mining and service facerals and other structures and improvements. The norming of the term direct and include Continuer Frenites Equipment.
- (bh) "l'elephone Services" skall mean local and long distance telephone service provided by Coc through one or more allitiates or third porties.
- (cc) "Turnoves Date" success (i) as to each Village Assaziotom, the date no which the Class B reemberships in such Village Assaziotom size crawtested to Class A memberships procused to the terror 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 coing control of Vistancia Maintenance Corporation (is Master Developer's caponia) as Declaration under the Master Declaration terminates pursuant to the virtual provisions of the Master Declaration, and (iii) as to any other Home Owners Association the date, as provided fin in the spaticable viving provisions of the doclaration of coverancy, conditions and exaritations establishing such Home Owners Association, on which the declaration conditions and restrictions establishing such Home Owners Association will terminate.
- (dd) "thereutable Delay" mouse a delay caused by exerts, circumstances or acts broad a party's reasonable control. Such exerts, circumstances or acts mov include, without finitation, and only to the extent between the affected party's reasonable control and not resulting from such party's tailure or instability to fulfill a mountary obligation an intervening as of (fed or pathe enemy, fire, humanose, savim, advance weather conditions flowed, corthquake, epidenic explains, whenic ecoption, lightning nucleur radiation, conflicting flowed, continuous actions of such or granuluster with hugarhous nucleiche luss of process or shiften, purses surges, quarantine resultation, fieight emborgs, act of var (declared or mulechated), sim, public diseased, civil

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estimance, act or threat of terrorions, soluting or climinal disurge, regulatory delay, frigation challenging the validity or enforceptibility of this CNA, though in low, regulation or price prohibiting a party from performing its obligations, government exprepriations of property or equipment disulation or disappearance of etiloles, carriers or suppliers of unique materials or equipment for my long delivery periods, a failure to next delivery schedules by any talkity or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of uniterials or outproposal 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 more by performed before the extion that is delayed.

- (ee) "Village Association" musta cach Village Association as defined in and formula personal to the Master Declaration and the applicable Village Declaration therefor.
- (ff) "Village Declaration" means each Village Declaration as defined in and recorded paramete to the Master Declaration each as autended from time to time
- (gg)"Vistancio" means the SHRs and MFUs within the Development in Pooria. Arizona, as described in Recital A
- (bh)"Vistancia Maintenance Corporation" means the Astrona arm-prefit corporation organized or to be regarded pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CNA (fite "Initial Term") shell be fire a period of 20 years commencing on the Agreement Date. At the end of the linial Term, this CMA will automatically exceed for successive terms of fit as went each teach was the five year term being hereinafter referred to as a "Renewal Term" is unless either party gives written notice of its intent not to reach to the other party at least 90 days prior to expression of the latifal Torus (or the Renewal Torus tenthe) referred to as the "Term." The linitial Term and any Renewal Term are subject to early termination as pensided in Sections 10 and 11 of this CMA.

3 License and Access Hights.

- (a) Development Process. As used berein, the term "Development Process" means the application and concessing by the Master Developer of each Plan, the seconding of Decharations limithding, without humbans, the Master Developer of each Plan, the seconding of Decharations intending without humbans, the Master Decharation and to any Village Decharation; the filing of Mayo of Dedication, and similar processes enstrumity utilized to the development of authoristions; if being further understand that Thereforement Process' shall include, without limitation, the establishment of Platted Executed Access along off streets and the outphiers, together in whit work additional formions are more be reasonable or expedient in carrying out the nution of this CMA and the Non-Exclusive
- (b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all exeats within 20 days) following excention of this CMA by the parties. The parties agree that netwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted in Cox possumat to the Non-Exclusive License.
 - (s) Neither the construction and installation on the region, replacement and maintenance of Technology Facilities by Cor. shall intreasonably interfere with the development of the

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authorizing or with the use or enjoyment thereof by usy Neighburhood Builder or subsequent owner of an SFR or MFU located within such authorizing

- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiory of any rights granted under the Non-Exclusive License have the right to enter (by rivine of the Non-Exclusive License or otherwise) upon any pation of a lot on which an SFR or MFU is constructed (except such protion or may be within the public right of very) offer the first conveyance of such SFR or MFU in a bover or other transferer who is entitled to receive by remote of such conveyance a subdivision public report pursuant to the Arizona Revived Statutes §32-2183, §12-2195.01 or any transfer statute hereafter in effects without the price convexal of the their convexal or such SFR or MFI.
- (in) Notwithstanding now other provision beroal, in no event shall are helder or beneficiary of any rights granted under the Non-Exchasive License have the right to ento (by virtue of the Non-Exchasive Licenses in otherwise) into the interior of any SFR in MFH or any structure related thereto and located thereton nithout the prior consent of the files current owner thereof.
- (iv) During the Detechquiera Francis; the Master Developer shall establish and delineate Platted Eastment Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive Lecture. Notational standing any provision to the contrary, the Master Developer will also catalish and delineate areas in which extended the focuses or minister regions may be granted either by operation of lon, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CNER and the Non-Exclusive Locane. For the provided, however, that such extenditions and delineation shall not crode or leasen the rights conveyed under the CNER or the Non-Exclusive License. Master Developer and Cox admostledge and agree that the intent of this section 3 and the Non-Exclusive License is to provide Cox with physically tensioning ontonents, ficenses and access rights throughout Vistancia, which allow-Cox to reach each SFR and MFU within Vistancia. In the event that the provinces of this section 3 are not sufficient to accomplish this, Master Developer shall grant or especially provided accessive to falled the intent of this section 3, including, unforted the translation, any nocessary canadions or rights of access between mis-couplishes Plets; in the crycia that Naster Developer's continued or inventing to pinvick the publishered equations or access representations or including proteomer or Master Developer's continued and/or (ii) require Master Developers to reintburse Cox for the axinal cost (plus, reasonable expenses) of acquaring such moment rights.
- (v) Cox shall not introducably interfere with the use of the Platted Ensonent Areas by other printers of services or utilities, except as constrainfacted by the CSFR and the Nun-Exchange License. Specifically, it is interested by Cox that sanitary seiver, our as seiver, natural gas, electricity, and other visities utility services may opened with Cox is the Platted Ensement Areas: and, the ther, that the Non-Exchange License; a non-exclusive and the Platted Ensement Area may be utilized by other, even conspeciative. Commun Service Providers as contemplaced by the CSFR, this CMA and the Non-Exclusive License.
- (c) Pre-Wire Specifications. Master Developer shall include in its contracts with Neighborhard Huilders, as contemplated by <u>subsection (bb)</u>, the language regarding compliance with Pre-Wire Specifications set forth in item (b) of <u>Exhibit A</u>: powinded however, that if the Neighborhard Builder will not agree to such possission, then (i) Master Developer should be permitted to delete such item (b).

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from its contract with the Neighborhard Builder, (ii) thereafter Master Developer shall work with Cas to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pro-Were Specifications in the construction of each SFR and MFLL as set forth in item (b) of <u>Exhibit A</u>, and (iii) Cars will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

- (d) Past-CMA (hungs. As to subdivisious or parechs of property within the Development that have already been sold to Neighborhood Buildire and/or are in currow to be sold as of the Agreement Date, Marker Developer agrees to use its different, poud faith efforts to conset thems Neighborhood Unitdoes to comply with the applicable provisions set forth to aphoretion 3(c).
- (e) Repair of Improvements. Cox shall promptly repair and restave (to their condition existing immediately prior to such use by Cox exclusive of normal view and least any on-size or off-size ranges canonic that are damaged or destroyed as 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 notifee Communication Services. During the Tenn of this CMA. Cox shall have the preferred right to market and offer the Communications Services (including interactionlogs comprising all or part of the Communication Services as it becomes craidable) to existents of SFRs and MFRs in the Development, which preferred right shall apply only (i) within any madel home operated by a Neighborhead Builder that purchases any partieus of the Development from Market Developer, and (ii) within any common area tract owned by a Home Counces 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 as any such common area tract shall terminate upon the Turance Dote for the Home Owners Association of Vistancia Maintenance Corporation, as applicable) dut owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office or Vistancia operated by a Neighborhead Builder that purchases any portion of the Development from Master Developer, Marker Developer's unit obligation in connection with the provisions of this subsection (a) relating to model homes and model home from the first shall be no include the provisions for forth in Exhibit A in province up sements and option agreements on provided in <u>subsection 6(b)</u> of this CMA, is being specifically ack movindeged and agreed by Cox that (a) Master Developer does not and cannot control the use or operation of any tech model home made home offices of the Neighborhead Builder, and (ii) all obligations of Master Developer ander this <u>subsection (a)</u> relating to model homes and model home offices of each Neighborhead Builder, and (iii) all obligations of Master Developer ander this subsection (a) relating to model homestically acknowledged and agreed by Cox that (a) Neighborhead Builder, a not control the sex or operation of any tech model home offices of the Development Sha

(b) Future Effect of CALA. Monothresseding one contrare provision of this CMA that CMA (including but not housed to, the preferred right granted in Cox motor subsection, 431 and the exclusive rights granted be Cox notes. Section 5) shall not be loosling upon (i) any House On near Association or common area tract within the Development owned by any such those Onnex Association, following the furnever flots for such House Owners Association, (ii) Vistances Maintenance Corporation or

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ecommon area tract within the Development owned by Vistancia Mainteanance Corporation, following the Turnover Date for Vistancia Mainteanance Corporation, or (iii) any consert of may portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in <u>authorition 6(b)</u>) and Master Developer, Without limiting the generakly of the foregaing. Cox specifically agrees and orknowledges that the preferred right granted to Cox under <u>subsection 4(b)</u> and the exclusive rights granted to Cox under <u>Section 5</u> may terminate at such trace as Meighborhood Builders that purchased property within the Development from Master Developer me so bages operating model houses in the Development. The compensation as set furth in <u>Exclinic C</u> (the "Marleting Compensation") will be paid as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluative membering and sales efforts on behalf of Cox. So long as Master Developer's eveluation of the Cox and the exclusive master and the exclusive master of the subsections of the Section of the Cox and the property of the Cox and the province of the Cox as the Vistancia Maintenance Corporation. The exclusive mastering deliginations members due for the conformance with the provisions tection, or shall pay the compensation to the tennion of the Vistancia Maintenance Corporation.

- (c) Cos Obligación to Provide Communication Services. Cos agrees to make available, at a minimum, the fellowing Communication Services to usual phases positions or subdivision parects of the Development as are wild for development to breighbertund Builders, or to other position through exercises that dose during the Term of this CMA, which Communication Services shall be provided by Cos in accordance with the standards set forth as <u>y thinkle E</u>;
 - (i) Cable Television Services. Subject to legal and regulatory constraints. Cable Felevision Services for each resident of any SFR or MFU that administrative for such service, provided that Cox, shall be entitled to cause such service to be provided directly or by or sharingh a parent, subsidiary or Affiliate of Cox.
 - (ii) Service Standard & Upgrades. Cox shall appraise the Cable Februsium Services within a reasonable time at no east to Manter Developes, any Neighborhard Builders, any Home Owners Association, or Visionetic Maintenance Corporation, to define a level of service that equals or extends the torvices being offered by substantially similar providers of such colds television services within the metropolitan statistical area of the community. If and when other products because cummerability available, Cox will incorporate such fasture technology services into the bandle of Communication Nervices heigh official to Visionais evidents thereof, when it is sechnically economically one operationally featible to to no.
 - (iii) Telephnius Service. Subject to legit and regulatory requirements and availability of relephnius monitors, Cox shall offer Telephnius Service to each resident of any SFR or of any MFU that subscribes in such service, provided that Cux shall be establed to provide such service by or through a potent, subscribing or Allifains of Cox, including but not limited to Cix Arizona Teleum, ULC and provided further that Cox shall have access to buildings as accessary to provide the service.
 - (iv) Instruct Access Service. Solicet to legal and regulatory constraints. Cox shall provide laternet Access Service for each resident of any SFR or MFU that subscribes to mels service; provided that Cox shall be entitled to come such service to be provided by or through a puent, subviding or Affiliate of Cox.
- [d] Coa Obligation to Provide Technology Facilities. Cox agrees to construct, provide install, reputs, replace and maintain all Technology facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sale case and expense, provided that the

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Technology Facilities will be installed and provisioned over time, on a phased-in basis during the histal Term of that CMA, so long as the Communication Services can be provided to each SFR and MPU upon initial occupancy thereof

- (c) Design & Installation Conditions, Cris shall design and install the Technology Facilities (exclusive of the Pro-Wiring in the SFBs and MPUs which shall be the requisibility of the applicable Neighborhood Boilder) in abcordance with system aethiciture and achoractic plans set forth in Exhibit B for those phases or particular of the exceptionacts in which Cost receives the acrease nature install the Technology Facilities in deliver the Communication Services to any phase or particular the Development in which Master Development in which should not be provided by Master Development or, at as own expense. (1) constructed any buildings or structures required by Master Development or, at at some expense. (1) constructed any buildings or structures required by Master Development or, at a superior of the provident of the provident of the provident of the Development (limited, in the case of treathes in the right of very dedicated to Pensia or other applicable povernmental authority, the CSER and Mon-Exchaine License to install in such treathes), which joint treather shall confure in the roate and specifications building of the APS roate and specifications that reviews (in hum agree of that any additional tempting beyond the APS roate and specifications that may be necessary to attenues and shall be the responsibility of Cos and other stillive companies in the treath or provided in authority for Provided to Cos without charge, access to any believe the provide to the treather of the provision of the Pro-Wire Specifications attached as <u>Exhibit D</u>: (4) provided to Cos, without charge, access to any believe proving provide to any portion of Vintancia conveyed to a Neighborhood Builder reviewed and acceptate of this CMA. had all pre-wiring installed by the Neighborhood Builder reviewed and acceptate of this CMA. had all pre-wi
- (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 some to Master Developes and the applicable Neighbarhood 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. Coreshold be solely responsible for your days, placing, constructing and installing the appropriate Technology Facilities, an accessory to provide the full range of Communication Scorices (subject to legal and regulatory restraints), in accordance with applicable law.
- (b) Appearable, Permitte & Compliance. Core shall be salely asspannible for the following with respect to all work performed by Cox or let contractors, agents or employees, all reasonable and legally required constructs, approvals, applications, fibings, permits, licenses, bands, insurance, inspections, construction, falso, neutrical qualities in the first compliance, qualitre standards compliance, and unspirance 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 personnel proporty of Cox (underso otherwise stipulated to in writing to Cox). Upon termination of this CMA, Use shall stand risk to and control of the Technology Facilities in its optima, may eather tenone the Technology Facilities from the Development or leave such Technology Facilities in place.

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at its own cust and expense. Can shall operate, repair, replace and maintain all Technology Faribbes at its own cost and expense.

- (j) Early Termination Upon Occasion of Service. In the event that Cox is muche to er is afternise prevailed from providing any of the Communication Services by legal or regulatory constraints. Master Developer shall have the right to terminate this CMA, in applicable just or in whole or provided in Services 18, but shall not have the right to seek remedies of specific performance or denuises for default.
- (b) Individual Subservice Basic Unless this CMA is amended in varioning the Communication Services provided by Oceanide that CMA will be provided on an individual subscriber losis. The torus and conditions in the authoriber agreement regarding charges for Communication Services and Contours Promose Equipment (individua) as to the annual of any deposit, substance provincut, restal or preclases of associated Communic Promises Equipment and installation or knotcup fees) shall be the ament as are generally available from Cox in Province and the area of the City of Provin adjacent to Visuancia and/or as set footh in Cox's toriffs for local exchange as set footh with the Arcisma Congruntion Commission.
- (1) Billing Subactibera. Cut will be responsible for billing subscribers for the Communication Services.

 Costshull not look to or other tone held the Master Developer, any Neighborhood Builder, and Issue Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for provided directly to Master Developer, any Neighborhood Builder, one flower Connect activates provided directly to Master Developer, any Neighborhood Builder, one flower Owners Association or Vistancia Maintenance Corporation as a subscriber with be the sequenciability of such subscriber; Oct textices the right to remainse Consummication Services to any subscriber who does not finish particle amounts or who coloring fails to abide by the terms, and conditions of its subscriber accounts.
- [m] Model Hume Service. Cus shall make available in one main model house per Neighbruhund Builder and the project information center (as designated by Master Developer), at Cor's suit and and expense.
 - (i) Digital Coble Television Service. One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all gramming and services blocked) to a television provided by the Neighborhood Builder in the model home; build such model home is sold to an andividual insurbayes) and to a television provided by Master Developer in the information canter.
 - (ii) Cro. High. Speed Internet Denna. One "complimentars" (mon-chargeable) Cox. High Speed Internet denna to a computer provided by the Neighburhood Builder (molt such model have is said to an individual hemebases), and to a computer provided to the Master Developes in the information country.
 - (iii) Signage at Point of Belivery, Appropriate recognision of the hosels pure ided to Cur shall be given by was of remembly visible segange provided by Cur at each point of deliver within the model home (with the vize and location of same to be entitlished by the reasonable motion) agreement of Cux and each Neighborhould Buildes) and within the information center (with the size and location of name to be entablished by the reasonable mutual agreement of Cux and Master Developes)
- 5. Exclusive Marketing Rights and Marketing Incentive Fees.
 - (a) Exclusive Rights of Circ. During the Featt of this CMA:

- EPAGE 1 -

- (i) Endorsement by Master Developer, Master Developer shall endorse Cox exclusively as the preferred provides of the Communication Services to Vistancia
- Marke in g and Promotics of Communication Services. Master Developer hereby grants to Cox the each sive right to nurket and premote the Communication Services in Vistancia, which exclusive right shall apply only (s) makin any model home operated by a beighborhood Builder that porchases any position of the Development from Master Developer, and (ii) within any monator area tract one and by a Hunte Owners Association or Vistancia Monatemance Corpuration and made arailable by Master Developer for the (a) Marketing and Promotion of Comme marketing of Communication Services, provided that Con's preterred right with respect to say such common area tract shall terminate upon the Turminer Date for the House Owners Association for Visitation Mointenance Composition, as applicable) that owns such enumon area tract. Master Developer's only obligation in connection with the provisions of this mberefies fit) relating to maked homes shall be to include the provisions are furth in <u>Exhibit</u>

 A in certain purchase agreements and option agreements as provided in <u>subsection 6(b)</u> of
 this CMA, it being specifically acknowledged and agreed by Cove that (A) Moster Developer mes CMA, it today apotencially actionstrological and agreed by CMs that (A) Noster Investore from the constituted the new operation of uny such model bound to a Neighborhood builder, and (B) all obligations of Master Developer under this subserction (ii) relating to model houses of each Neighborhood Builder to whom it seths any portion of the Development shall be failly mustained if Master Developer includes language substantially is the form of Exhibit A in its punchase agreement or opinion agreement with such Neighborhood Builder:
- (iii) Nimitar Agreements and Ca-Branding, Master Developer and the Access Entity shall not enter into now arrangements sandon to this CMA, or endowe or engage in pronounisms or musicaling activities of any kind by or for the benefit of any other provides of Communication nux lexing activities of any kind by or for the beachs of any other jurnishes of Communication Services, excepting only communication services that One elects not to or is incapable of providing and otherwise as expressly provided berein. Without limiting the foregoing, Master Developer and the Access Entiry shall not enter into any agreement which promits the co-branding of the instruct house page or any advertising on the community pages they and product of technology services within Vastancias that we equivalent to any of the Communication Services (including any laterage provides or gateway) other than: Cox High Speed Internet Insticution

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comprensation which, in the oggregate, althous a long payment them is provided for Marketing Comprensation under this CMA as not forth in Exhibit G (including, without Marketing Compensation under this CMA as set forth in Exhibit of fineduling, without limitation, amendments or applements theren, which may subsequent to the date of this CMA, or (b) provides for any marketing compensation which takes individually (as to an individual SFR or MPU) allows a lower precent payment than is proveded for Marketing Componantee under this CMA as set forth in Exhibit of (including, without limitation, amendments or supplements therethe which may subsequent to the date of this CMA, or its provision of any service of a lesser quality than in being offered by Componant to this CMA, Que, Moster Developer and the Access Enths acknowledge and agree that the rights in this CMA, Que, Moster Developer and the Access Enths acknowledge and agree that the rights in this perticulated other provisions in this CMA are intended to create a level playing field for all Communication Services puriedly. and not be provide discounts on competitive advantages to fire compensative advantages to Con-

(b) Cus. Marketing and Promotion Effort. Cox shall undertake to market and promite the Communication. Services in an effective and different manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C

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- (c) Marketing Compressions. Cres shall pay to Manto Dorchiper a Marketing Compression as set forth in Eshibit G. thering the Torns of this CMA; provided no Marketing Compression shall be payable after termination of this CMA with respect to any Communication Service that is the indigest of such termination except for Marketing Compression accuract in respect of such Communication Service(s) but appoid as of the date of such termination.
- (d) Reporting by Neighburhord Builders to (i) deliver to Cox by the liberath day of each month a report of the alcenty of all buyers in he have closed exercis for purchase of SFRs or MFUs during the pion month, and the inspective dates of closing, and (ii) deliver to Cox any updates to each report on the last day of the month. To the extent ony such report is not provided by a Neighborhood Builder. Master Headquer shall provide such report to the extent of the stock of the state of
- (c) Master Developer Asalit Rights. Within me was following Moater Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to andit the banks and stoods of Cert regarding the table of occument subcription to Communication Services for the period coreral by such pownest of Marketing Compensation to verify the amount of Marketing Compensation doe. All sudits shall be conducted during mornal business fronts and upon reasonable prior nextens does be the party being sudited. All andits shall be conducted at the office in Arizona where the party loing sudited maintains the records to be sudited. No records shall be removed from such offices by the auditor. Unless required by law or count order or as evidence in any dispute resolution proceedings, the ouditing party shall not disclove any non-public information obtained in course of the sudit. If as a result of an audit it is determined that any amount owing has been suderpool by more than Pa. The sudited party shall reimburse the auditing party for the resonable out of the audit.
- Technology Facilities Cooperation & Coordination by Master Developer. .

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- (3) Cooperadon by Master Developer, Master Developer shall cooperate and courdante with Cox in the design, parasiting, construction and installation of the Technology Facilities described in <u>Exhibit</u>
 <u>B</u> and shall establish and imploment 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. Moster Developer shall include provisions in authorability the form of Eshibit A stacked herein in each parchase agreement or option agreement and the brighter than the Developer and a Neighborhood Builder during the Term of this CMA parament to which property within the Development in conveyed to such Neighborhood Builder for deschopment with SFRs. Master Developer shall cooperate with Cus to the extent antioecoment of the Neighborhood fluider's obligations under such provision is respirately provided. however, that Master Developer shall not be a required party to any sun or orbitation initiated by Cox socking to enforce say such Neighborhood Builder deligation. As to property within the Bevelopment that her shearly hote sold to Neighborhood Builders and/or is in escreen to be sold as of the Agreement Date, Buster Developer spress to use its reasonable, good faith efforts to cause such Neighborhood Builders to boon sold to Heighborhood Builders and/or is in excrom to be sold as of the Agrosment Date, Master Developer agrees to use its rememble, good faith efforts to cause such Neighborhood Builders to agree to the provision as farth in Exhibit A. Municipatanding any contrary provision of this CMA. Master Developes shall not be responsible to histle for any breach or default by a Neighborhood Builder of its obligations maker any provision in <u>Exhibit A</u>, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provisions in <u>Exhibit A</u> constitute a default by Master Developer under this UMA.
- (e) Congression in Use of Technology Essentence and Similar Use Right Areas Muster Developer shall ecogerate with Core, at Cor's cost and expense, in Cor's efforts to obtain the new-exchante right

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to utilize comments or similar use night areas established pursuant to Plots processed by Master Developer in respect of Vistancia.

- (d) No Obligation of Cas to Build Soles Centers or Structures. Cox shall not be obligated to oxestract or poy for one rules centers or other structures that are constructed or exested for the purpose of despizating Cox marketing austroines, as acquired of Merster Developes (so to common ores tracts prior to the Turnover Date therefor) and/or any Meighborhood Builder (as so model homes) in which Technology Facilities are constructed, provided metalled, explained, required and maintained under this CMA.
- (e) Cas Trenching Obligations. Unless otherwise postated for under this CMA or otherwise that to the failure of Cas to comply with the terms and provisions of this CMA. Cas shall not be obligated, exampt as provided for in this <u>subsection field</u> to perform or pay for the excavation, opening or cloving of any point touch up or serving any purious of Vistancia, to provide installation of the building stores from the joint trunches to any building. All of which shall be and remain solely the responsibility of Masser Developer and/or the applicable Neighburhood Builders (i. Cas will provide at its sele cost and expense, the condition and drup coblets to be installed by each Neighburhood Builder in its subdivision. Normithatending any constany provision beroof, if Cas determines that any trenching is necessary to accumendate Cas's Technology Excitation that is wider than, deeper than, we otherwise become or different from the APS roots and specifications (such trenching being bereinsifter referred to an "Additional Treaching"), then Cas should reimburse to Master Developer for the applicable Neighburhood Builder, if it installs the Additional Treaching 1 a preportionate share of the cas throwed Cas shall purish makes to Master Developer's (or the Neighburhood Builder's, are applicable townersecuries) of construction of the need for an Additional Treaching prior to Master Developer's (or the Neighburhood Builder's, are applicable townersecuries) of construction of the need that requires any such Additional Treaching Cur will pay the cast of Additional Treaching based on the Western States joint Treach Formula.

Technology Facilities Cooperation & Coordination by Co-

- (a) Bustalbaines of Technology Facilities. Cos shall (i) cooperate and constitute with Master Developer and the applicable Neighborhood Buildess in the design and construction of the Technology Facilities described in <u>Eulibit B</u> for those portions of Victaricia that are said by Master Developer for development of SPRs to Neighborhood Builders through excesses that clear domain the Technology Facilities (CMA, (ii) commence and complete its design, construction and instabition obligations in a timely and effective mannes, in accordance with Master Developer's for the Neighborhood, and (iii) toep Master Developer and the applicable Neighborhood Builder subdivision proved or neighborhood, and (iii) toep Master Developer and the applicable Neighborhood Builder field, and finely informed thoughout the course of design also matterates. Without finentiation of the furgroung. Cos shall make the design to the Technology Facilities for any given authorision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builders applicable in enforced to those to secondanded. Cov'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 discusse the design with Cax on that the planning and progress of Victaria or such subdivision will not be interrupted or adversely impacted.
- (b) Timely Debrery of Phone. At all times during the Term of this CMA, and at all relevant times thereafter. Con will provide to Master Developes or the applicable Neighborhard Builder using mining plans for all Technology Pacificies than Cox subsets to construct and usuall at the Development or the applicable authorizing parcel sufficiently in advance of such planned conventation and invalidation of Technology Pacifics, so as to partial and Ecclinate timely and conveilibrium extends and conveilibrium.

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be performed by each. Master Developer and/or any Neighbardand Daildes shall provide no less than ton (10) business days notice to Cox of the final date for installation of Tochnology Facilities within any traced constructed by Master Developer or such Neighbardand (hailder. So long as the foregoing nation has been provided, in no event shall Master Developer or any Heighbordand Builder be required or obligated to re-opon a completed traced to accumundate the installation of any Tochnology Facilities, which re-oponing shall be the safe response billy and expense of Cox.

- (c) Covernmental Permits, Cox will be responsible for obtaining all governmental positis and licenses, coming variances and other governmental approvable of Cox's sale cost and express, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) Warranty. Cox makes no marranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and marrants that the Technology Facilities isotalled by Cox;
 - Are reward by Cost without the right of any other person or pasty to remove or after the street, and
 - (9) Shall provide the Communication Services and otherwise astisfy the operating specifications and parameters set forth in this CMA.
- (c) Construction Manager. Cox shall appoint a manager to act as a ringle point of conduct for corollaration and cooperative suplementation of procedures for receiving day-to-day construction issues within Visionic.
- (f) Marketing of Aparaneous Parcela. Cut will cooperate with Master Develops, thing the Tean to prevent to prevent purchasers of spanhant pureds and developers of MRS. a selection of anasycenests for the provision of Technology Facilities and Communication Services to such projectics. Such arrangements may include but not be limited to, an offering of habited services or discounted enter, if allowed by law, or an offering of consideration to the purchasest developes in exchange for exclusive marketing rights, Developes shall use its reasonable efforts to include Cox in discountions with my such potential porthases/developer of an apartment or other MPU parcel, in order for Cox to present such selection and initiate direct discountings and regulations thereof with the patential parchases/developer.

bourance; Indemnification; Waiver of Subrogation.

- (a) Required Insurance, During the Team of the CMA, Can and Mayor Developes each shall maintain insurance satisfying the requirements of <u>Exhibit F</u>.
- (b) Danage or Destruction by Master Developer. In the event that Master Developer its agents shall maghinesh or willfully change or destroy any Technology Forcifishes nowed by Unv in connection with or arising from the construction or installation of use on arising from the construction or installation of use or order or officer improvements then Master Developer shall eximitence Cox for the cost and expense of repairing the same.
- (c) Damage or Destruction by Coa. In the event that Cox its agents shall negligeably or milliolly damage or destroy any on-site or off-sate 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 expense of expension the time.
- (d) No Linkibey for Computer Domage. Netwithstanding any contrary provinces 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 at stands data on for damage to computer or any other.

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lechnology-relatest expiriment of any such person or entity or any less of income or revenue resulting thereform

(c) Waiter of Juhrugation. Natwithstanding any contrary provious of this CMA, each party to this CMA hereby matrices all rights that it may have against the other to recover for any loss arising out of m incident to recurrence of the perils covered by proporty and casualty insurance that is required to be carried by each party hereto partners to subsection (a), notwithstanding the amount and type of such assurance coverage elected to be extried by such party heresoder or whether or not such party has elected to be additionated in any amount or to any extent, except with respect to the resolvancement provisions of subsections (b) and (c) above to the extent not encount by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to chainste my risk afform a finality which would have been ensemble or extend or exceed to the debinance of the other party and not a shalling which would have been ensemble by properly insurance and finishly increases if such other party had obtained such insurance energing (or an adoqueste amount thereof) in lice of additionations or an inadequate amount of, or coverage worder, such insurance) except as noted with respect to subsections (b) and (c).

Representations and Wastanties

- (a) By Master Developer. Master Developer hereby represents and warrants to Cus as follows:
 - (i) Or ganization and Ausbority. Master Developer is a duly organized limited liability company excited under the laws of the State of Delamare, in qualified to engage in business in the State of Anzana, has the required power and all required governmental approvate to carry on its present and proposed activities, and has full power, right and authority to onter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
 - (ii) Ther Execution. Each person who, in the name of Master Developer, executes this CMA has been didy authorized to exacute this CMA on behalf of Master Developer.
 - (iii) No Conflict. Noither the execution and delivery by Master Developer of this CMA, nor the consumention of the transactions contemplated facety, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise fluiding or qualifying the other representation, warranties and coveragets of Master Developer ander this CMA; the executive meangement of Master Developer has on knowledge of any written notice executing a classe first might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) No Lifepation. There is no hingation served on Muster Developer, which challenges Muster Developer's maleurity to execute, deliver or perform this CMA, and the executive management of Muster Developer has no knowledge of any threatened hingation with expect to such nature.
 - (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 UMA.
 - (vi) No Conflicting Rights. Moster Developer has granted no exclusive or equivalent rights to any other provides of Communication Services within Vistancia that are composable to Con's preferred provides status with respect to the Communication Services becomes. Prov to the Agreement Date.

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(b) By Cox Cox hereby suprements and warrants to Vistancia as follows:

- (i) Organization and Authority: Cox is a duly organized corporation orcated under the laws of the State of Delaware, is qustified to engage in business in the State of Arizona, has the requisite power and all required liceases to carry on its present and proposed activities, and has full power, right and authority to crase into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (iii) Bur Authorization. Cut has taken or coused to be taken all exposite 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 Cos, executes this CMA has been duly authorized to execute this CMA we behalf of Cos.
- (iv) No Conflict. Neither the execution and delivery by Cee of this CMA not the consummation of the transactions consemplated beneby is at the time executed is conflict with the governing instruments of Cost or any other agreements or instruments bould 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, warmaises and coverants of Cost under this CMA, the executive management of Cost has no knowledge of our written written existing a claim that night reasonably be expected to austerially impair the use of the Communication Services.
- (v) No Litigation. There is no higgsion served on Cux, which challenges Cux's authority to execute, deliver or perform this UMA, and the executive management of Cox has no knowledge of any thrememed linguism with respect to such matters.
- (vi) Compiliance with Law, Cox is in material complicate with all laws and regulations applicable to Cox's activities in connection with this CMA.
- (c) By Access Ending Access Ending heathy represents and warrants to Cox as follows:
 - (i) Organization and Authority. Access Entire is a duty organized limited fiability company sealed under the laws of the State of Arizona, is qualified to engage in between in the State of Arizona, has the requisite power and all required governmental approvals to carry on its prevent and proposed activities, and has full private, highly and authority in enter into this CMA and to perform each and all of the obligations of Access Entiry provided for besein and therein.
 - (ii) Due Execution. Each possess who, in the mone of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
 - (iii) No Conflict. Neither the exceptions and delivery by Access Entire of this CMA, nor the consummation of the transactions contemplated hereby, is at the time exceeded in conflict with the governing instruments of Access Entire or any other agreements or instruments to right, it is a prarty or by which it is bytand; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, normatics and covenants of Access Entire under this CMA, the excessions management of Access Entire has no knowledge of any written notice accurately a claims that anyth reasonably be expected to materially impain the time of the Communication Services.

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- (iv) No Litigation. There is no linguism served on Access Entity, which thellenges Access Entity's authority to execute, deliver or perform this CMA, and the execution management of Access Entity has no Lamiledge of any thorntoned faigurion with respect to such matters.
- (v) Compliance with Law. Access Fusion is an material compliance with all laws and regulations applicable to Access Ensist's activities to connection with this CMA.
- (vi) No Conflicting Rights. Access Entity has granted to enclosive or equivalent rights to any siften provides of Communication Services within Venturein that are comparable to Cox's preferred provider status with respect to the Communication Services becomed each Agreement Date.

10. Default and Remedies.

- (a) Eventh of Default. Except in case of thomosubble Delay (in which event the time for performance hereunder shall be extended by the period of time that such Hasvaichable Delay exists), each of the following circumstances shall constitute a default woder this CMA, in which case the new-defaulting party shall have the reasonies provided below and in <u>Section 18</u> with respect to the type of default that has occurred.
 - (i) Monetary Default. A pany shall be in "Monetary Default" upon failure to pay any man of money due becomeder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) Performance Default. A party shall be in Yer formance Default if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform sends in a Manetary Default) when performance is the and commence the cure thereof within 30 days of receipt of notice of the failure and obligantly prosecute pack cure to completion.
- (b) Remedics for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to necover the amount determined to be due in necovarience with the applicable dispute resolution procedure of <u>Section 12</u>, logsther with interest thereon from the date such amount was due until poid at the rate of 12° per amount.
- (c) Remedies for Performance thehalt, in the event of a Performance thefoolt, the modeficialing party shall have the right to care ou behalf of the defaulting party any default become, and as obtain elimburconers from the defaulting party for the cost of such care, together with interest thereou hour the date such our wax paid until reimbursed at the rate of [2° per annium, in sucretance with the applicable dispute recolorion procedure of <u>Section 12</u>. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereties becoming due to the defaulting party from the non-defaulting party.
- (d) Con Additional Remedies. In the event of a Performance Default by Master Developer or Access Entire. Cor shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of <u>Section 12</u>.
- (a) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Gre. 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 diquate resolution procedure of <u>Section 12</u>.

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- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or received this CMA as provided for in the applicable subsections of <u>Section 12</u>.
- (g) Memetary Damagers. The mustificating shall have no right in obtain memory damager except as expressly provided in this Services 19.
- (b) No Consequential Domegra. The defending party shall have no liability for incidental indisect, corresponding up punitive damages.
- (i) CSER and License. No breach or default under this CMA by either party shall have any effect upon not shall now much breach or default impair or lessen, directly or indirectly, the rights or religations erested by the CSER and the Non-Exclusive License (escept in the event of termination of this CMA doe to such default, in which event the rights and obligations of the purious shall be as provided in Section 1) below), the porties betten representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 1) below).
- 11. Termination and Partial Termination, Rights of Parties after Termination.
 - (a) Additional Rights to Terminole. In addition to termination on expection of the Initial Term as provided in <u>Section 2</u> or to minution as permitted under <u>Section 10</u>, this CMA may be terminated or partially terminated under the following Groundstance:
 - (i) Creation or Interruption of Communication Service. In the event Cox is mattle or otherwise fails to provide Cattle Television or Internet Access Service in Vistancia or any posture thereof, the to loss of its license from City of Feorias or otherwise, or in the event Cox is unable or otherwise this to provide Telephone Service directly or through a bird porty to Vistancia or any posture thereof, or in the event that Cox decontinuous per iding any such Communication Service for any reason whostoever. Master Developes shall have the right to terminate this CMA effective as of the time that Cox cented to provide the effected Communication Service.
 - (ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Communication Services or any compounds thereof e.g., Internet Access Services. Cable Telestion Services are any compounds thereof te.g., Internet Access Services. Cable Telestion Service, Telephone Services, in a binety, sorticative and its other winds consistent with the spirit and intent of fins CMA. Master Developes shall give Cox a written explanation of such determination and the reasons the clar. On word respond a Master Developes, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its respond under, if applicable, its proposal plan of resolution. Thereafter, within ten (10) business days of disastes Developes's receipt of Cox's response, the parties shall state in person or telephosically, in words to dottens their deficiences. Within 10 business days following such sucting to: if Cox is unable or otherwise fails to meet with Master Developer within such 10 business-days period within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed as timely respond to Master Developer's institut entermination, within 10 business days of Cox's receipt of Master Developer's institut entermination, within 10 business days of receipt of Master Developer's resolution (1) Cox state dect to include the médiatries process provided for in Section 12(a), by notice to Master Developer infinit 5 business days of receipt of Moster Developer's first of outcontext issues, following which institutions punces Master Developer many either to ministe this CMA vs. if Master Developer does not terminate this CMA, this CMA shall remains in full fairer and effect; or (2) if Cox fails to timely initiate the mediation process faster to mediation process faster to mediation for except per does not terminate this first to read terminate the mediation in the continue of the or and the entitle to read the entitle of the or and the mediation in the co

recespt of Master Developes's list of unresolved issues. Moster Developes shall be entitled to terminate this CMA by unice 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 ofter the expiration or earlier termination of this CMA (including, but not limited to, any termination due in nectured delayle (A) the Non-Endevire License shall remain in effect with respect up and Cox shall combinate to laser the rights of access to, each SFR and MFU provided by all Platted Expensest Aseas toutsineed on Plats that have been scowded as of the chare of such expiration or terminations and (B) Cox may constitute to deliver Communications Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Tacitities within such Plats, and install, operate and maintain its Technology Tacitities within such Plats, and install, operate and maintain its Technology Tacitities under the Non-Exchairty License on the Non-Exchairty License in turn way the rights that Cox has or may have under the Non-Exchairty License on by applicable law or regulation to office and provide Communications Services to residents of SFRs and MFUs texted within Plats that have been recorded as of the date of such termination or expiration, but the Non-Exchairty License shall terminate with respect to and under otherwise required by applicable law or regulation. Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within only previous of the date of such that so of the date of the communication services provided visition a recorded Plat as of the alter some expiration of the date of such Plats and provide Communication Services or install Technology Facilities within only previous of the date of such expirations or termination. After termination or provided provides of the date of such expirations or termination. After termination or or such own-recorded provides of the such such expirations or termination or termination. Services are such as the such sec of different from the Non-Exchaire License provided that Cox may continue to serve those coining residents su
 - (ii) No Obstruction. Regardless of the reason for termination, Measter Unchaper shall not obstruct, interfere with or discriminate against any efforts by Crec to enter into an arrangement with Provis or other applicable governmental substrict for installation use, maintenance and operations of Technology Facilities in Provis or other applicable governmental right of stay, and/or with a Neighborhood Builder for the provision of Technology Facilities in Communication Societies in on seria outside of Vistancia. Con action/regions and agrees, however, that any exercise by the Access Entiry of its rights under the CSER shall not constitute a visitation of the foregoing provision.
- (c) Unwinding Upon the explasions or certies termination of this CMA, the period shall take such actions (and otherwise assist such other) in such reasonable and product time and manute as is appropriate in order to "unvisid" the ex-marketing and other relationships established order this CMA, including, without limitation.
 - (i) Removal of Property. Within 30 days after the expiration or earlier terminatum of thin CMA, (1) Cost shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements at structures, or otherwise on property, council by Masker Developes. Vistancia Maintenasee Corporation, on House Owners Association, or any Neighborhoud Builder, and (2) Masker Developer shall remove any and all of its facilities, equipment, introdungs and other stems of personal property which are levated within or any property owned by Cost.

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- (ii) Destruction of Co-Branded Daterials. Each party shall climinate, destroy and cease the use of any co-branded to joint marketing motesials produced under or in accordance with this CMA; and
- (iii) Internet Bocumentenion. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianes" and Moster Developer shall remove all of its equipment used in the operation of "Vistancia ues" from the property united by Cox.

12. Dispute Resultation 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, conservery or claim of any kind or native arising under or in connection with the Agreement and the parties are maddle to reache through informal disputations or regotiations, the parties agree to submit such dispute, continuersy or claim to mechanism or arbitration in accordance with the following percedities:

- (n) A leditation. In the event that there is an increasived dispute not provided for in any other Section of this CMA, either party may make written drained for medication to the other party and to a mediation nutually acceptable to the portice (the "Intelliber"). Within fair (5) business also after receipt of such destand, the responsing party may the most to the Mediator and the insisting party or written response setting forth any other results and concerns which they believe are relevant to the insure presented for mediation. Unless inheritors agreed once a demand for mediation has been filed, these shrill be no us part communications with the follower.
- (b) Information. A Nechausr shall promptly determine if oil parties are in passession of adopase information necessary, in evaluate the issues and concerns set furth in the damand maire and or the response therete (collectively) the "Clause") In the even the decors that they are not, the shall stilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within folices (15) days after the demand for mediation was received. The Mediator shall than schedule a conference monty the parties, to occur which their (30) days ofter the demand for mediation was received. The conference will be attended by the paratum most familiar with the insues set forth in the Claime, and by a representative of each party, who is nathorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negativations between the parties upon preparation of a written assuming by the Mediator shall be deemed to be senters pertaining to settlement negotiations, and not subsequently ofmissible of one further proceedings and all documents of operations, and not subsequently ofmissible of one further proceedings. Shall be deemed by the parties. The cost of the Mediator shall be horse equally by bull parties. Upon a determination by the Mediator that further negotiations are tooffsety to achieve further meaningful results, he shall declare the mediators procedure terminated, and any matter not resulted number reafered on a referred on a referred on a resistance of parties of parties of results and sections and more those of resulted on the referred to arbitration as provided below.
- (c) Arbitration. Either parts may demand arbitration by giving the other party written netice to such officer which nation shall (i) describe, in resemble detail, the nature of the dispute commercing or claim and (ii) name as arbitrater who is experienced in the subject matter of the trace and dispute. Within ten (10) does niter the other party, a receipt of such demand, with other party shall name the needed substrater who is experienced in the subject matter of the issue in dispute. The two arbitrators named shall select a third arbitrator who is also expendenced in the subject matter of the issue.
- (d) Costo di Freta Manter Developer and Cros shell each beso fifty percent (50°a) of all fora, costa and expenses of the inhitration, and each party shell best its own legal foca and exposses, and costs of all

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experts and minutesiae, provided, however, that if the claim by the party is upheld by the arbitration panel and an aff material respects, then the arbitration panel may approxima between the posties as the arbitration powel may does equilibrie the cours incurred by the prevailing party.

- (c) Procedures. The pury descending arbitration shall suppose the orbitration panel to (s) allow for the puries to expect seasuable discovery pursuant to the inter-that are in effect under the State of Araccas 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.
- (1) Award Final, Any award rendered by the urbitration panel shall be final, conclusive and binding upon the parties and any judgment thereton may be entered and conveced in any overal of competent jurisdiction.

13. Axigoment.

- (a) Mn Antigrament. Neither Cox nor Master Developer very assign this CMA or its rights under this CMA and delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or other wise shall be effective, without the prior noiten consent of the other party (which shall not be notenously) withheld, conditioned a delayed if it accors prior to the experimental termination of this CMA and which may be withheld in the sole and obsolute discretion of the purp where consent is required if it occurs following the expiration, termination or partial termination of this CMA, except as provided in <u>subsections (b) or (c)</u>.
- (b) Master Developer, Master Developes shall have the right to usign in right, title and interest (and to be concurrently reflected of related liabilities assumed in writing), without Cor's currout (i) to any other developer in connection with an axisymment of substratiable all of the three cristing interest of Master Developer and Vistancia. (ii) to any entity which have, duestly or indirectly a 20% or greater interest in Master Developer (ii) to any entity which have duestly or indirectly a 20% or greater interest in Master Developer and or any entity of Master Developer Affiliate may merge or consolidate. (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate. (iv) to a buyer (whether by tale or exchange) of inhibitatically all of the undatabiling unmarship units of Master Developer, or (v) to the Access Entity or to any other entity had controls the utility examination on when rights in the areas where the Communication Services are located. Any such aveignment by Master Developer shall not be effective until the assignor signs and delivers to Cox a document in which the assignor opportune responsibility for all of Master Developer's affiguitions under this Admining from and after the effective date of assignment and if such suspace has entered into a written agreement, in form reasonably acceptable to Cox assuming, without condition, receivation or exception, the obligations of Master Developer's when the collective date of the assignment, then Master Developer shall be relieved of all responsibility for all of the control of the article of the assignment than Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which trice after the effective date of the assignment
- (c) Cox. One may assign Cox's interest in this CMA and in any execution, permit or other assurances of access granted to Cox becoming or pursuant hereto respecting to Inalmology Euclidees without Master Developer's contest (i) to my entire which but, directly or indirectly, a 30% or greater interes in Cox (n "Parent") or in which Cox or a Parent has a 30% or greater interes (on "Affiliate"), (ii) to any entire which Cox and or any Affiliate, may use go convenidate, (iii) to a baser (whether by sale or exchange) of substantially all the entert of Cox or any Affiliate, (iv) to a bayer (whether by sale or exchange) of aubstantially all the entert of Cox or any Affiliate, (iv) to a bayer (whether by sale or exchange) of aubstantially all the entert of Cox or any transferre of Cox's bitteness conducted in Pooria or other applicable governmental authority, or to any transferre of Cox's license for other legal sushmitted of Cox's provide Calle (active to a continuous in the assignment shall not be effective until the assignment upon defenses to base to the continuous maler this CMA.

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arring from and after the effective date of assignment and if such assignment has entered into a written appropriate in form reasonable acceptable to Master Developer, assuming, without condition, reasonation or exception, the obligations of Cox under this CNA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all reasonability for performance of its obligations under this CNA which arise after the effective date of the assignment.

14. Macellamenus

- (a) Assentiumnes. No considerest of this CMA shall be effective orders made in writing everyted by both Master Developer and Use fand by Access Ensity, to the extent any such amendment offices or relates to the obligations or agreements of Access Ensity hereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereta, and the gram of extensions or other assurances of access pursuant bereto (including, but not britisel to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cgs with respect to the subject traster covered disordy and against selected to because, representations and understandings, written or oral, between Master Developer, the Access Entity and Crit with respect to such subject money.
- (c) Attermeys' here. In the event of any dispute on logal proceeding (including judicial reformer and arbitration) between the pastics arising out of or relating to this CMA or its breach, the prevailing party shall be easitted to recover from the new-poerailing party all fees, costs and expenses, including but not limited to atterneys' and expert miners fees and disbursaments (and specifically including lawly allocated douts of in-house conversel), instructed in outnessition with such despute on legal proceeding, new counterclaims or cross-complaints, any action to continue correct or vacute an arbitration award any appeals and any paventing to establish and recover such costs and expenses, in such amount as the court, referee or arbitrated determines accountable. Any party cutering a valuntary districted of any legal proceeding without the convenant of the opposing party in such proceeding shall be decised the awarevening party.
- (d) Considererability. The determination that any provision of this CNA is invalid at menfanceable will get affect the validate or enforceability of the remaining provisions or of that provision mades other commissioner. Any invalid or mentioneable provision will be enforced to the provisions extent permitted by low.
- (e) Coverning Low. This CMA shall be governed by and construed in accordance with the lows of the State of Arizona.
- (f) Notices. Any notice or deniand from one party to the other under this CMA shell be given personally, by covided or segistered until, parties prepaid, return receipt sequested by confirmed fee, or by reliable oversight downer to the address of the other party set touth on the signature page of this CMA. Any order neveral presentily shall be decased delivered upon receipt, served by tecsimile transmission shall be decased delivered on the titue of receipt so shows in the received facinitie, and served by certified or registered mail or by reliable overnight courses shall be decased delivered on the date of receipt as shown on the addresses's registery or certification of receipt or on the date receipt is relined as whether on the receipt or manifest of the U.S. Postel Service or such contins. A party may have base to have 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, portner, joint venturer or employee.

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- (b) Third Party Betteficiaries, Nothing contained in this CMA is intended or shall be construed as securing or conferency any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any training or cabler and a mate in this CMA.
- (i) Waiver. No maintry by may party of any right on termedy under this CMA shall be doesned to be a values of any other or submember right or remedy reader this CMA. The constant by one party to any act by the other party requiring such constant shall not be decined to enade unnecessary the obtaining of ocusions to any subsequent act for which convent is required, regardless of whether similar to the act for which consent is given.
- (i) Writing Required. No act stellar or emission done, suffered or personned by one purp to this CMA shall be deemed to noise, extense or impose any right, reasonly or power of such party his cander, or to relieve the other party from full performance of its obligations, mader this CMA. No neither of any hats, coverant or condition of the CMA shall be valid unless in writing and signed by the obligate party. No contains or practice between the parties in the administration of the teams of this CMA, shall be construed to varies at lessen the right of a party to invisit upon performance by the other party in strict compliance with the terms of this CMA.
- (b) Brokerage. Each poory 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 indensitie, protect, defend with connect neceptable to the other porty and hold hornless the other party against any claims for commission, tinder's for or life compensations asserted by any real estate baker, agent finder or other person claiming to have dealt with the indensitying party in connection with this CMA.
- (i) Additional Documents. Each party herety shall execute and delver at such additional instruments at unit from time in time he necessary, remountle and/or appropriate and requested by another party in order to implement and energy out the old/gations agreed to be render.
- (m) Continuing Effect. All coverants, agreements, representations and rearrantes 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 Cerezin Terros. When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plant), and plant words include the singular. Use of the word "include" or "includery" is intended us on introduction of illustrative matters and not as a limitation. References in this CMA, suckes another dreament is specifically referenced. The word "pasts" when word in this CMA, suckes another dreament is specifically referenced. The word "pasts" when word in this CMA means Muster Developer, the Access Entiry or Cast onless another neuring is expaned by the context. The word "person" includes individuals, entities and generomental substitutes. The word "person includes individuals, entities and generomental substitutes. The word specifically povernmental authority" are intended to be construed broadly and includes and apparent power includes in the intended to be construed broadly and includes all statutes, regulations, relings and uthor official pronouncements and official endought and includes all statutes, regulations, relings and uthor official pronouncements of any governmental netherity and all decrees, relings, judgments, symmons, buildings and orders of a new administrative body or arbitrator.
- to) Rules of Construction. The language in all parts of this CMA shall in all cases be constraind aimply, as a while and on accordance with its fair meaning and not stretch for or against either party. The parties hereo aclass-solege and spree that this CMA has been prepared jointly by the parties and has been the object of arm's length and caseful negotiation, that each pair, has been given the opportunity to independently severa his CMA with legal connect, and that each party has the requisite experience and suphistication to understand, interpret and agree to the particular language of the provisions herent. Accordingly, in the event of an ambiguity in or dispose expending the

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interpretation of this CMA this CMA shall not be interpreted or construct against the party propering it, and instead other rules of interpretation and construction shall be utilized.

- (p) Counterports. This CMA may be excepted in two or more constant parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) Proprietary below mation. Each party acknowledges and agrees that are and all reformation cramating from the other's besiness in my form in Considerated Information", and all reformation that it will not during a offer this CMA terminates, peans the deplication, me, as declosure of my math Considerated Information to any person not understed by the disclosing party, unders such deplication, use or disclosure is specifically authorized by the other party in mixing prior to say disclosure, provided that neither porty shall have any obligation with respect to any such a formation that is, as becomes, publicly terms through no wroughl act of each party, or that is rightricity received from a third party in island a similar regardation and without breach of this CMA. Each party rest that use tenomatite disgence, and in no even these than that degree of each this such party was in respect to its own considerated information of like rature, in prevent the unsuftwized ductorare or reproduction of such information. Without limiting the generality of the furgiving, to the extent that this CMA permits the copying of Confidenatia Information, all such copies shall hear the same confidentiality notices legendy and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not the copying of the public decasing information that receptor party as of the date of this CMA as shown by the recipient a written econds, unless the recipient party are of the date of this CMA as shown by the recipient is written records, unless the recipient party are of the date of this CMA as shown by the recipient is written econds, unless the recipient party are of the date of this CMA as shown by the recipient a written econds, unless the recipient party are of the
- (e) Recordings. Master Developer agrees to execute and occord documents which will establish Cox's existence rights on plats and stope of dedication. In labeling such existence in a "D U.S.S.E" sense in accordance with the torus and conditions of the CSER and Non-Exclusive Licence, as such disconnects are prepared by the Master Developes.

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IN WITNESS WHEREOF, the pastics hirrdo, intending in he legally haund heathy, have excusted this Co-Markeing Agreement as of the date first written above. "Mater Developer" SHEA SUNDELT PLEASANT POINT, LLC. a Delaware limited liability company 6720 M. Sentedak Read Suite 160 Sentesdale, AZ 85253 Phrne: (480) 905-0770 Factorisk: (480) 905-1119 By: Shea Humes Saudonest, Inc., an Arizona corporation, its Member By. he and required capy to 8800 M, Gainey Center Drive 8800 M. Gainey Center Dire Suit: 370 Scottishle, AZ 85258 Phone: (480) 367-7600 Facsimile: (480) 367-2841 .Hy: Simbili Pleasant Print Investors, L.F. C., on Arizona limited liability company, its Member By:Smitelt PP, LLLP, on Arizona limited liability limited partnership its Manager By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner Cartis E. Smith its Chief Operating Officer COXCOM, INC., a Delaware corporation, d b a COX COMMUNICATIONS PROCESS "Cox" 2040) N. 20th Avenue Phoceis, A7.85719

> J. Steven Rickey Gostrol Manager and VP

- FPAGE:

"Access Entity"

6720 N. Scottschle Road

67,00 N. Scottware Suite ICO Scottsdale, AZ 25253 Phone: 4480) 905-0770 Faccionile: [480] 905-1419

and required ener to 800 M. Geiner Center Drive Soite 370 Soutstade, AZ. H5258 Phone: (480) 367-7600 Facsimile: (480) 367-2841

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

By: Shea Soubelt Pleasout Point LLC, a Debugge limited liability company; its Manager

Pr Shea Homes Southwest, Inc., on Arizona corporation, its Membes

By. ks. __

By Sambelt Plearant Print Investors LLC.

as
Arizona limited liability company, its
Member

By: Symbols PP, RLLP, an Asiacon .

Finnited

Institute funited partnership its

Manages

By: Soubell Holdings Management, Inc., an Arizona experition, its General Pattner

By: Contis E. Smith, its Chief Operating Officer

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EXBIBIT A

Contract Provision - Purchase and Sale Agreements with Neighburhood Brilders

Seller loss entered into their certain Co-Marketing Agreement doled 2003 with Corcons. Inc., a Delaware comprisation of the Corcons. Inc., a Delaware comprisation of the Corcons. Inc. and certail and she additioned emission, a true and certail engine of a fitted, together with all antendement(s) therefore (s) any) that have been executed as of the dose of this Agreement (sent Co-Marketing Agreement and amendment(s) being bereinafter referred to as the "CMA") has been provided by Seller to Depart, Dever acknowledges and agrees that it is a "Neighborhood Unibles" as defined in the CMA. Boxes berein agrees that during the sense of the CMA:

- (a) Depart shall provide substantially the same comparation and coordination with Cos to agreed to by Master Developer personant to Section 6(a) of the UMA:
- (b) Bower shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the outeraid referenced therein, in accordance therewith, in each residence constructed by Hover on the Property, all at the sale cost and expense of Hover.
- (c) Cox shall have the exclusive right to market and presence Communication Nervices (as defined in the CMA) within any model house operand by there within the Property.
- (d) Buyer and Seller shall advertise Vistancia in all its medic and print motorials as a "Can Degistal Community" by including the Cas Digital Community logo (to be provided by Cas).
- (c) Cor shall have the preferred right to provide Communication Service to each model home effice operated by Bayes within the Property;
- (f) Beyes shall provide and upon the cost of providing (i) access to Cost to all necessary utility distribution trenches widnin the Property, which trenches shall comply with the royet and specifications provided by the APS plant therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by flayer out the Property.
- (g) Cox is intended to be a third-party beneficiary of all of the tonograms provisions of this Section and as such, shall have the right to enforce this Section.

[As Used in the foregoing provision, the scim "Salter" would refer to blaster Developes and the term "Boyer" month refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Fisioneia being partitioned by the Neighborhood Builder pursuan to the particular partition regressions or option agreement.]

EXHIBIT A

EXHIBIT B

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network
 - Distribution plant will be designed, installed and activated to 750 MHz bi-directional HI C Notwork capparted via self-heating filter ring backterne.
 - b) Average node size will be 500 houses and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all un-site trenches for placement of intrastructure. Cor, will install all touchut capucity seeded exclusively for the Cox network to enable deployment of Cox. Communication Services. Advance participation in actual and pro-print trench convolutation efforts with Vistancia and other expected subfries is exsented to blind post-laint Trench venching and deveration. Cox will install chadon conduit where appropriate based on anticipated Cris needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demancation NID (Nervey's Interface Device), shall be by consist cable. Therefaper will use rean mable efforts to enable Cur's standard design parameters that appeals's a maximum distance of 150 feet between pedestal and NID. Do edges not use of the organized and NID. Do edges not use of the organized and NID and part of the organized and NID and and
 - Equipment shall be enclosed in CATV type pedestals entirests and vaules
- Cable Television Services: Meet or exceed industry standards by programming quantity, and signal quality, of enalog and digital cable programming.
- 3) Telephone Service: Voice services shal, be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arzone.
- 4) Interpet Access Service: Ceri utill exercise remonable care to protect the integrity and accounts of all network traffic and shall network monitor for incuration). Data needcass shall be compliant with all MCMS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwittle, The natural: will be capable of delivery in accordance with the Technological & Services Standards established under the FUC and established franchise commitments.
- 6) Service Randwich Causantee: In the event that the above standards are determined not to have been not on hove subsequently degraded below the minimum for an average of over 10° of the customer losse, within a node, over one annulus time. Cost shall, at its talle cost, do one or more of the following:

Split the affected models) to bessen the number of busines served but midbout abbiguition to aplit below an average of 50 units per node.

Open additional data chonsels, or

Implement such other actions: as Cox deems appropriate. No week the minimum service standards:

EXHIBIT B

EVHINITO

Con Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Uox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Communication Services in Vistoria, if and to the extent that Marker Developer (in its sole describing) requests such survices and support from Cox. Developer shall not be entirted to sequence any sortesting or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will resist Cox in meeting and emmunolating with Neighburhout Buildox to educate them and their sales and leasing agents about, and emeasurage them to actively participate in the Cox Digital Community Marketing & Premonion Programs.

All marketing support provided by Cex under the Cex Digital Community Marketing & Prosonion Program will be mountly spreed upon by both parties and will be through the advertising squeey chosen by Cun. Cex 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:

- E) Support the sant to the clap and print customized literature highlighting the Vistancia Community and partnership with Cox. All meterial will be subject to grice review and reasonable approval of each posts co-branded with Cox and Master Developer trade mones and trademarks.
- A minimum of one month advertising in a local homebuilder developer publication which will include the Cox digital logo and monally agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliant of Cur. Communication, and Macter Developer and to use measurable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising with be subject to prior series and reasonable approval of each pairs cobranded with Cox and Master developes trade names in the trademarks.
- Porticipation in any future "Core Digital Cummunity" media campaigns that occur. Master Developes will be given ford right of refusal to porticipate in campoign(s) before being offered in my other Master Dovelopes. Community. Any specific holder media campaign developed by Cox will be excurpt, unless holder is an active participate in Vistamen Community, wherein Cox will rate every appartunity to promote the Master Developer. Builder "Cox Partnership, highlighting Vistancia.
- 3) Support of my Grand Opening activities highlighting the Vistancia Corantonity, Circ's participation, would include but with be limited to, product information hastle with active product demonstrations manpower assistance, bonners with logist highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Curt services
 - (b) oil of the above with require regular meetings and will include Master Developer and Cox to confer on northelly executions times to fresholder, evaluate and modify marketing plans and to prepare, review and modify promotional brothures, pockages, advariasements and other collateral movements.
 - (t) temperate to create and one co-branded premotional and sales brechares, packages and other collangul unseemds for Vectories that will reference Vestories pursuarity with Co-

EXHIBIT C Page (PAGE) Communications and will include the "Core Digital Community", the form and content of which will be unbject to the prior reasonable appropriat of each porty.

- (d) introduce and coordinate the respective morbiting programs, substitute and marketing agents.
- (c) highlight the Communication Services in meetings with prospective honers and at rakes opportune times during the marketing process.
- (i) provide prospective busers with the mind current information and productional barchares and materials;
- (g) offer training in Moster Developer's agents to include training by a Ciri Sulex Continuous 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 reannumbly acceptable schedule.
- (b) seek to include Coc's autociption agreement for viden and then, which shall include the Acceptable the Policy, and description of all survivors in each exercise package and or New Heutopomers videome foldow;
- (i) include Cox's name and a brief description of Cox's services, a Cox degral logic in all applicable written, and and electronic adversacement of Visionics or say place thereof whenever such advertisements absorbly the technology aspects of the angustics or sayvices.
- (k) when available previous use of the Cox High Specif Interset density in the main Model Sales Offices of the Meighlenhand Buildox.
- (1) allow Cas to the technology displays as a metal to advertise demonstrate, promote and develop the Communication Services and to conduct that point has a (excluding town him somers, agents and promoters of other master phonoid constrainments in Princip or other applicable governmental authority and excluding other telecommunications services provides) including producing phonographs, video tape. Blue or other media presentations relating to providing of Communication Services to the Property;
- (10) encurrage all parties describe associated with the valent lease of SERs of MFUs to
 - (1) mistee the Technology densor as a primary companiest of their marketing and primothinal efforts, including directing and encouraging prospective purchasers in visit it as the central awares of infini mation on Communication Services.
 - (2) provide prospecture inverse trith a copy of sufremations and personational involveres and materials made recently permitted by Cox & Vistancia residents.
 - (3) include signage and brockores of Cox in mertel miles and other Common Area farthries to be jointly determined by Cox and Moster Developer and/or Neighberhard Dolders.
 - (4) participate in uniting respecting proacheting Evanuamentains Services and policies and procedures respecting marketing.
 - (5) include brief descriptions of products and services in advertisements.
 - (6) incorporate into the New Howestayers Informative folders, "only" Cer sales packages information and materials when releasing to technology providers for Vistances, SFRs being developed and Communication Services expected to be a paint thereof.

EXHIBIT C Page (PAGE) provide notice of pending escrow closing:

EXHIBIT C

EXHIBIT D

Cable Television/Internet Access Services Pre-Wire Specifications Vistancia Residential Pre-Wir mg Guidelines

SFR and MFU INSIDE WIRTHG

braide wiring specifications are based on the roice services provided via cupper (CAF iil.). Video and high-speed data services are to be provided coax (RCis Boaded fail, 60°s braid, non-banded tape, those resortions PAC juckes Mess NEC Article 820 V Rating, UI, Lined).

CABLE TELE VISION INTERNET ACCESS WIRING

The Cable Yelevision Service, wrong must be hime run from the Service Center to each outlet distinct. Since it is anterpated that demand for advanced vervices will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA central cable of in or quad shield construction, with the reconstructable RG6 construction.

MO-degree comp connectors must be used consistent with the manufactures recommendative for the particular cubic mutabled. No staplets or hard federaces shall be used to secure coordel cables.

The cubic run of cuch outlet line (RG6 and CAT SE) connecting no individual outlet face to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the most served. The haldest or the electrical contractor and [provide a line of this configuration to the head cable configuration representation; at the time of construction. This indee action or required to comply with non-FCC regulations per transing to contending of in-home using. FCC Part 76 of Title 45 CFR (76 5(11) 76.802):

EXHIBIT D

EXHIBIT E

Technology & Service Standards

- Standards. Care shall, or shall cause its affiliated componies to develop, delives and generally maintain the Communication Services in accordance with the following applicable industry boothmark practices and standards Technology & Service Standards")
 - (a) Franchine is ficease requirements inquired by Pairis or other applicable governmental authority the Foderal Communications Communication ("FCC"), the Arizona Comparation Commissions ("ACC") in idlaci applicable guaranmental entities.
 - (b) Tariffs on file with the ACC
 - (c) Bellicore linebading TA-NWT-000909;
 - (d) National Cable Television Association, and
 - (c) Lista Network Standards.
- 2 Security. Cox will exercise reasonable care to protect the integrity and security of all petwork traffic and shall actively necessor for incursions. Reports on incursions and other security instance will be provided to More therebyen. One moreover shall be compliant with all MCNS-ONESIS sensitivity and powide for this packet energy-inter.
- 1. Service Response. Cox must mustice all persons components in accordance with specietate standards described in possgraph 1. Cox shall provide credies for service outsges in accordance with its Franchise or livense requirements imposed by Penria or other applicable governmental materials. FCC, ACC, to other applicable governmental entities, and as provided in the apreniator with the individual subscribes in the provision of service; and such credit shall be reflected on the following periods billing statement; provided that no such credit shall be available where the outsge is due to defecte or deficiencies in pre-wring installed by others a failure of a responsible party other than Cox to properly animatian such pre-wrings or due to customer-owned equipment fin no event shall the service standards or credits or remedies be less than those the subscribes in outsided to moder the Franchise. Cox viii mustice Manter Developer of signaficant planned outsges under the same conditions in which Cox is mandated by the Franchise authorities authorities or the officence conductors found in tages and will advise Manter Developer of such planned outsges on less than 24 hours in advance of such in tages and will advise Manter Developer of such planned outsges on less than 24 hours in advance of the service outsge.

EXHIBIT E

EXHIBIT S

laswance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- Comprehensive Liability. Commercial general liability insurance insuring against chims for budily and persunal injury, death and property damage caused by such porty, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability procession of Two Million Dollars (\$2,000.000) per occurrence.
- Western Compensation. Workern Compensation insurance in the statedory amount as required by the lens of the State of Arizona. Such insurance shall include a variety of subregulon endersement in favor of the other ports.
- 3. Automobile Limbilety: Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations made that Agreement. Such manusers shall provide a minimum owerage amount of \$1,000,000 constances single built 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 coverage, qualified to dis business within the Franchise Area and botting a Ben's resing of not less than A with a financial size of not less than IX. Each party shall fin sink cyclence satisfactors to the other prior to the date of this Agreement and thereafter at least ten 110) days prior to the expiration of any insurance coverage required to be maintained between that insurance currence required between this insurance currence required between its fisher during the Terra of this Agreement.

EXHIBIT F Page (PAGE)

exhibil C

Marketing Compensation Schodule

Cox will pay Master Developer the sum of Five Hundred Thousand and Nor100 Dollars (\$500,000,00) or 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 with pay Master Developer the turn of Five Hundred Thousand and No. 100 Dollars \$5500,000.00) on or believe to \$100 days after the date on which the first SFR or MFU within the Tribogy parties of the Development is connected to any Communication Service privided by Cox.

Core will pay Master Deschipes a percent of revenue according to the following scale, for its marketing of Cores products and services. The revenue will be paid on the intermental sales above 17% penetration. The penetration rate will be calculated by dividing active enaburers by total houses pussed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cabb Television Service (rectuding) long datasec), and intermet Acteurs Service. It is exclusive of fees measured for purposervices movies, long distance, installation fees, equipment fees whether purchased or restred, television guides, taxes, assessments, and feesure fees.

Potentiva	Payout	
75%-70%	15%	
80%-85%	16%	
86*	17%	
90%-95%	18*6	
96°5-100°5	20*:	

Marketing Compensation will be gold individually per product achieving 75% penetration. Each product must stand on its toon ment to order to qualify for marketing compensation.

EXHIBIT G

LT-15

Vistancia; CSER

Page 1 of 1

From:

Lesa J. Storey [Istorey@sbplc.com]

Sent:

Tuesday, May 27, 2003 10:21 PM

To:

Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)

Cc:

Curt Smith (csmith@sunbeltholdings.com); Mark Hammons

(mhammons@sunbelthokings.com)

Subject

Vistancia: CSER

Attachments: ESM_JM_5 CSER.Final with Exhibits (05-27-03).pdf; DVComparison_ESM_JM_4
CommonServicesEasementsandReshictions(Vistancia telecom) (03-24-03)-ESM_JM_5
CommonServicesEasementsandReshictions(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
- Redfined 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,

Lesa J. Storey Storey & Burnham PLC 3030 E. Carnelback Road Suite 265 Phoenix, AZ 85016 Main Line: (602) 468-0111 Direct Line: (602) 522-0202 Fax Line: (602) 468-1335 email: Istorey@sbplc.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

LT-16

FW: Vistancia; CSER

Page 1 of 1

From: Lesa J. Storey [Istorey@sbplc.com] Sent: Tucsday, 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 IM 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: Less J. Storey

Sent: Tuesday, June 10, 2003 2:51 PM

To: Tom Eccles (teccles@sunbetholdings.com); 'Linda.Trickey@cox.com'; 'Hary.Kelley@cox.com'; 'Tisha.Arthurs@cox.com'

Cc: "Cust Smith (comitn@ambetholdings.com)"; "Mark Hammons (mhammons@aunbetholdings.com)"; Julie King ((ling@aunbetholdings.com); Janet Gould (willfor@cybertrafs.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
- 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.

Lesa 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@sbptc.com

<<REDLINE (06-10-03).pdf>>

file://D:\emails\FW%20Vistancia.htm_%20CSER.htm

3/18/2005

LT-17

Vistancia: Telecommunications Agreements

Page 1 of 1

From: Lesa J. Storey [Istorey@sbplc.com]

Sent: Friday, June 20, 2003 3:45 PM

To: Trickey, Linda (CCI-Atlanta); Arthurs, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix)

Ce: Curt Smith (esmith@sunbeltholdings.com)
Subject: Vistancia; Telecommunications Agreements

Attached for your review are the following:

1) Redfined 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) Redfined 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);

 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.

Lesa J. Storey
Storey & Burnham PLC
3030 E. Camelback Ruad
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>></AMD_LJS_1 First Amend CMA (06-18-03).doc>> <<AMD_LJS_1 First Amend CMA (06-18-03).doc>> <<A

file://D:\agreement\from\20\Shea\20\legal\Vistancia.htm_\20\Telecommunications\20\A... 3/17/2005

LT-18

Fron: Lesa J. Storey [Istorey@sbplc.com]
Sent: Friday, June 27, 2003 4.09 PM
To: Anhurs, Tisha (CCI-Phoenix); Kelley, Mary (CCI-Phoenix); Trickey, Linda (CCI-Atlanta)
Cc: Curt Smith (csmith@sunbeltholdings.com)
Subject: Vistancia; Revised Sub-License Agreements

Tisha, Mary and Linda,

Attached are redined copies of the revised Non-Exclusive License Agreements relating to the commercial and residential agreements at 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.

Lesa I. Sturey
Storey & Burnham PLC
3100 E. Curnelburk Roud
Sulte 265
Phinovir. AZ 65016
Main Line: (602) 468-0313
Direct Line: (602) 468-1315
email: Istorey@sbptc.com

<<.I.C._IM_7 Non-Exclusivet iconseAgreement(Vistancia telecom)-Commercial redline (06-27-03), doc>><<UC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential redline (06-27-03), doc>>

LT-19

Curt Smith [csmith@sunbeltholdings.com]

Sent:

Friday, October 03, 2003 11:57 AM Christie, Tisha (CCI-Phoenix)

To: 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 and 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 _IM_7 Non-Excl... _JM_8 Non-Excl... 4_cox_comms_5 Vi_M_COX_6 Vistanc...

----Original Message----

> Prom: 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.

> results for you melp.

> < < OVComparison_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>> > < < OVComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement (Vistancia telecom) - Residential clean (06-27-03) - LIC_JM_9 Non-ExclusiveLicenseAgreement (Vistancia telecom) - Residential clean (06-27-03) - LIC_JM_9 Non-ExclusiveLicenseAgreement (Vistancia telecom) - Residential clean (09-25-03) .doc>> > < < OVComparison_AGM_COX_comm_5 Vistancia commercial final red line (04-04-03) - AGM_cox_comm_6 Vistancia commercial again restant (09-25-03) .doc>> > < OVComparison_AGM_COX_comm_6 Vistancia commercial again restant (09-25-03) .doc>> > < OVComparison_AGM_COX_comm_6 Vistancia commercial again restant (09-25-03) .doc>> > < OVComparison_AGM_COX_comm_6 Vistancia commercial again restant (09-25-03) .doc>> > OVComparison_AGM_COX_comm_6 Vistancia commercial again restant (09-25-03) .doc>> OVComparison_AGM_COX_comm_6 Vistancia commercial again vistant (09-25-03) .doc>> OVComparison_AGM_COX_comm_6 Vistancia commercial again vistant (09-25-03) .doc>> OVComparison_AGM_COX_cox_comm_6 Vistancia commercial again vistant (09-25-03) .doc>> OVComparison_AGM_COX_cox_cox_cox Vistancia commercial and restated (09-25-03)1.doc>> > <cDVComparison ACM COX 6 Vistancia residential final redline (04-04-03)-AGM_COX 7 Vistancia residential and restated (09-25-03).doc>>

WHEN RECORDED RETURN TO:

Shea Sunbelt Pleasant Point, LLG <u>Vistancia Communications, L. L.C.</u> 6720 N. Scottsdale Road 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 there 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 "Licensos" shall have the meanings ascribed to them above.

ARTICLE 1 - RECITALS

Section 1.01 WHEREAS, Licenson is the "Grantce" 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 Licenses to Licenser, Licenser, Licenser desires to grant Licensee, its grantees, successors and permitted assigns an inevocable 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 <u>Amended and Restated</u> Property Access Agreement dated April 8, as of September 25, 2003, executed by Licensor, Shen-Sunbah 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 numicipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July

IM-333619-1 COPYRIGHT © 2000, 2001 KRIEG DEVALET ALEXANDER & CAPEMART, U.S.P. Non-Exclusive License Agreement Page 1 23, 2003, to 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 hereignfier 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 fineholding, but not limited to, Licensee's obligation to pay the License Fee 24 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 IVY 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 manual 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

Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permined 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), luternet 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 hescender; 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 Licensec, 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 uses 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, multifarmly 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 mother 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" herenader only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

B4-333619-F Copprignet O 2000, 2001 Krieg DeVallet Alexander & Capemart, I.E.P

Non-Exclusiv License Agreemen Page 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 confirmation or termination of the PAA. Any attempted or purported assignment, sale, transfer, sublicense, occumbrance or disposal in violation of this <u>Section 2.03</u> 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, leasees, 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 Fasement 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 JII - LICENSE FEE AND SERVICE STANDARDS

Section 1.01 License Fee, In consideration of the bicense granted hereunder, Licensee agrees to pay to Licenson 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 1.02 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 tosses, 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

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Non-Exclusive License Agreement Page 3 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 Y - 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 granter 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 <u>Section 4.02 Acknowledgment of City Rights and Waiver of Claims</u>. 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 <u>Section 4.02.5.02</u> (including, but not limited to, the obligations of Licensee bereunder).

Section \$.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 hereander).

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 State 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 6.02 Section 5.03 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5.03.6.01, 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 5.03.6.01, 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 5.04.6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 Section 6.03-Delivery Information. The information for notice to the Licensor and Licensee is ser forth above (at the beginning of this Agreement and introductory paragraph, respectively).

114-333619-1 Coppressor & 2000, 2001 Krieg Devart Alexander & Capulait, L.L.P. Noo-Exclusive License Agreement Page 4 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		LICENSEE				
		OMMUNICATIONS, L.L.C., an liability company			C, a Delaware corporation d/b/a TIONS PHOENIX	COX
Delaware		cit Pleasant Point <u>Vistancia</u> , LLC, a	By.	lts:		
	Shea	Homes Southwest, Inc., an Arizona oration, its Member				
	Ву:	its:				
Ву:		ock Pleasant Point Investors, L.L.C., an one limited liability company, its niber				
I	ły:	Sunbek PP, LLLP, an Arizona limited liability limited partnership, its Manager				,
		By: Sumbelt Holdings Management, Inc., an Arizona corporation, its General Partner				
		Day				

Schedule: 1.01 Other Easements or Liceuses
3.01 Liceuse Fees

Curtis E. Smith, its Chief Operating Officer

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Non-Exclusive Liceuse Agreement Page S

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STATE OF ARIZONA))ks	
County of Maricopa	5	· .
	ent was acknowledged before me thi	sday of
2003, by	the	of COXCOM, INC., a Debware
corporation (//b/a/ CUX CUM	MUNICATIONS PHOENIX, on b	custi mo cor
	N	otary Public
My Commission Expires:	**************************************	
		•
		:
STATE OF ARIZONA)	
)ss .	
County of Maricopa)	
The foregoing instrum	ent was acknowledged before me th	isday of
2003 by Curris E. Smith, the C	hief Operating Officer of Supbelt H	loidings Management, Inc., an Arizona corporation, the
General Partner in Surbelt PP	LLLP, an Arizona limited liability	limited partnership, the Manager of Sunbelt Pleasan
Point Investors I. I. C. an Ari	zona limited liability company, a M	ember in S bea Sumbek Pleasant Poun <u>Vistancia,</u> LLC, :
	mpany, the Manager of Vistancia (Communications, L.L.C., an Arizona limited liability
company, on behalf thereof.		
•	, , , , , , , , , , , , , , , , , , ,	lotary Public
My Commission Expires:		
		•
STATE OF ARIZONA	1	
JINIE OF AGEOTIA)55	
County of Maricopa)	
The foregoing instru	ment was acknowledged before me d	his day of
2003 hv	the	of Shea Homes Southwest, Inc., a
Arizona corporation, a Memb	er in Shea Supbelt Pleasant Point V	ctancia, LLC, a Delaware limited liability company, the
Manager of Vistancia Comm	urocations, L.L.C., as Arizona ium	ted liability company, on behalf thereof.
	•	Notary Public
My Commission Expires:		
	•	
•		
84-33519-1	EVAULT ALEXANDER & CAPEMART, I. L.P.	Non-Earlusi License Agreeme
CONNICHT & MID, MOI KRIEG DI	TAULI ALEXAMER & CAPERANI, L.C.	Pan

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 lice of the Deed of Trust and the rights and interests of the modersigned in the Locan Documents (as defined in the Deed of Trust), including without limitation, that certain Assignment of Construction Agreements and Development Henrs dated December 23, 2002 made by <u>Vistancia, ILAC., a Delaware limited liability company</u> (formerly known as Shea Sunbeit Pleasant Point, LLC., a Delaware limited liability company), for the benefit of the undersigned, the undersigned bereby 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, 2001 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

Notary Public

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SCHEDULE 1.01

Other Essements on 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 Exements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, L.L.C., 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'hia 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, Servindes, Liens, Reservations and Easements for Vistancia Village A, recorded on July 31, 2003, in Instrument No. 2003-1025411, official records of Maricupa 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 Plot of Descri Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Email 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.

Hist other plays), if any that have been recorded as of date of recordation of Non-Exclusive License)

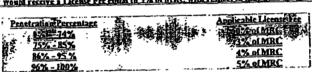
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SCHEDULE 1.01

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 bereinafter defined) within each Building) multiplied by the Monthly Recurring Revenus (as hereinafter defined) for that Building. The License Fee shall be calculated (and paid by Licensee, if owned pursuant to the prayisions of this Schedule 3.01) separately for each Building within Vistancia that is constructed on land conveyed by Muster Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that puberibes to any Cox Communication Service (each such Building being hereinafter referred to as a "Outlifting Building."). As used herein, the term "Practication Percentage," shall mean, with respect to each Outlifting Building, the percentage account calculated by dividing the total square footage of the Qualifying Building thing Building the the total remable square footage of that Outlifting Building. For example, if a Outlifting Building tontains 100,000 total remable square footage of that Outlifting Building. For example, if a Outlifting Building tontains 100,000 total remable square feet and has Owners, tenants and other occupants substribing 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 courd to 3% of MRC with respect to that Outlifting Building.



Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that mould produce a higher License Fee under the above chart, then Licenser shall be entitled to the higher License Fee, which shall apply to all MRC attributable to that Onaffying Building. If the Penetration Percentage decreases then Licenser 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 Licenses (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Licenses. Technology Facilities located within Yistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from unto revenues if the same were included therein, installation and construction fees, fairs, 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, nurcharges, 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 License becaused the firm the fee payments due to License becaused the fee payments due to License for payments due to Li

The parties acknowledge that I irensee 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 la provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by I icensee from such third party providers be deemed MRC or subject to payment of Licensee Fresh hereunder. Furthermore, allowing third party providers to deliver selecommunication services or communication stervices or 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.

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All navments of the License Fees shall be navable to Licensee without the and at the address set forth in the first paragraph of this Appropriate, or to such other address as Licensee may designate. Payments of Licensee Fees shall be made during the Term of the License on a quarterly hasis, within minery (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensee shall be entitled to interest at the cate of 1% per month multi paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the hooks 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 ceasonable prior written notice is the party being audited. All audits shall be remainted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be remained from such offices by the auditor. Unless required by law or court order or as tridence 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 \$%, 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.

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WHEN RECORDED RETURN TO:

Shea-Sumbelt Pleasant Point, LLC
<u>Yistanda Communications, L. L. C.</u>
6720 N. Scottsdale Road
Summit 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 Scottschile Road Suite 160 Scottschile, Anzona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Ioc, a Delaware corporation db/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 <u>Appendix A</u> 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 <u>Appendix A</u> is bereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE 1 - RECITALS

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

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensee, to Licensee, to Licenser 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 Sunbelt Pleasant Point Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "CMA").

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Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chantered municipal corporation (the "City") have entered into that certain Muhi-Use Easements and Indemnity recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maticopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereimafter provided.

Section 1.84 WHEREAS, in accordance with the CSER and CMA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Exsernent 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 finchating, 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 Pay 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 manual coverants 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

Premises and Use. Licenson hereby declares, creates, transfers, assigns, grants and conveys unto Section 2.01 Licensee, its gramees, 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, mintain, 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 hereinofter defined), Telephone Services (local) and Telephone Services (long distance) to SFRs (as bereinafter defined) and MFUs (as hereinafter defined) in the Development, (b) upon, under and across the Service Essement Area, to excavate and perform any try 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 fatemet 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 perpensally (the "Term"), subject to the following: From and after the expiration or earlier termination of the CMA, this License shall reimin 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).

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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, tessees, 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 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 licens, encumbrances, restrictions and prior easements of record including, without limitation, the CSER. Licensor and Licensee hereby coverant and agree that the Licenselicense granted hereby, together with all the covernants 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, Licenses agrees to pay to Licenses 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.

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 LY - ARTICLE BI -- INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Section 3.01 Indemnification. Licensee agrees to indemnify, defend and hold barmless 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 "Indemnifices") from and against any and all losses, claims, darrages 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 Indemnifices 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 on hold harmless any Indemnifice from that Indemnifice's own negligence, or any act or omission which is wrongful on any Indemnifice's part.

Section 4.02 Section 3.03 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, 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

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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 severa (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 Y - ARTICLE IV -- AGREEMENTS BENEFITING THE CITY

Section 5.01 Section 4.91-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 granter 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 4.92—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 4.93 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 nor limited to, the obligations of Licensee hereunder).

ARTICLE YI - 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 State 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 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 State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5.016.01 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 Licensoe is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.84 Section 5.84 Change of Address. Any party may change its address to another address (or facsimile number to another accionate number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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Non-Exclusive Excesse Agreement

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By: Sumbell PP, LLLP, hability limited part Manager					
By: Sunbeh Holdin Inc., an Arizon General Partne	a corporation, its				
By: Curtis E. Operating	Smith, its Chief				

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Non-Exchaire License Agressess

STATE OF ARIZONA))ss			
County of Maricopa	5			
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		Notary Public		
My Commission Expires:				
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STATE OF ARIZONA)			
Owner Market)53			
County of Maricopa	,			
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General Partner in Sumbelt PP, LC	LP, an Arizona limited liabi	lity fimited partner	ship, the Manager of	Sunbelt Pleasant
Point Investors, L.L.C., an Arizona Delaware limited liability compar	a limited liability company, a my, the Manager of Vistanc	Member in Shea-Si ia Communication	unbelt Pleasant Point s, L.L.C., an Arizoni	<u>Vistancia</u> , LLC, a limited liability
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Arizona corporation, a Member in Manager of Vistancia Communic	Shee Suebelt Pleasant Pour	e <u>Vistancia,</u> LLC, a imiest liability con	Delaware limited hab	dity company, the
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LENDER CONSENT

The undersigned is the holder of all right, fitte 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 lies of the Deed of Trust and the rights and interests of the undersigned in the Lean Documents (as defined in the Deed of Trust), including without limitation, that certain Assignment of Construction Agreements and Development Hens dated December 23, 2002 made by <u>Vistancia, LLC, a Delaware limited liability company</u> (for meetly longer 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 Delawage corporation

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Non-Exclusive License Agreemous Page 7

SCHEDULE 1.01

Other Essements 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 Sumbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peotia, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricona Courty, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcorm, 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, Servindes, 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 Pancel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Dual Flat of Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa
County, Artzona 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 Licensel

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SCHEDULE 191

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor the sum of Five Hundred Thousand and Norl 00 Dollars (\$550,000.00) on or before ten (19) days after the date on which the first SFR or MFU within the Village A partion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor the sum of Five Hundred Thousand and Not100 Dollars (\$500,000,00) on or before ien (10) days after the date on which the first SFR or MFU within the Trilopy 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 bereinafter provided. The revenue will be paid on the incremental sales above 75% penetration. The generation rate shall be calculated by dividing active customers by lotal homes (i.e., total SFRs and MFUs) passed fenetration 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 tong distance), and Internet Access Service. It is reductive 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.

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:	86%-90%	17%
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The License Fee shall be paid individually per product achieving 25% 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 ninery (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 Licenser's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of License 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 andits shall be conducted at the office in Arisona where the party being audited graintains 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 cridence in any dispute resolution procredings, 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 undergood 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.

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- (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 sneets 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 cometimes 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.
- (1) "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, fiberT1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transcriptes, 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.
- "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 disturbence, 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 of equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any mility 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
- (12) "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."

License and Access Rights.

- (a) Development Process. As used berein, 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 fiftings 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 Planed Essement 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 Digoncurrently 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.
 - 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 crode 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-continguous 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 bereunder 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 Noti-Exclusive Liceuse. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may cocxist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive Liceuse 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 Liceuse.
- (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, traints 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 <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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 <u>subsection 5(b)</u>) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under <u>subsection 4(a)</u> and the exclusive rights granted to Cox under <u>Section 5</u> 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 <u>subsection 4(a)</u> and all exclusive rights granted to Cox under <u>Section 5</u> 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 <u>Exhibit C.</u>

- (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 communication Services being offered within the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services compaising 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 Teleom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customet 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) Con 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.

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(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 Coramanication 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, tenam 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 skeeves.

- (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 restmants), 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 <u>Section 11</u>, 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 changes for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, sental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are

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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 hable 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.
 - (e) 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 intranct home page or any advertising on the communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or communication).
 - 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 Co 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 nt as set forth in Section-Bin Schedule 1.81 of the Non-Exchasive 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 Paym under this under Schedule 3.01 of the Non-Exclusive License 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. 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 Con. Notwithstanding any contrary pravision bereal, this Section 5(d) shall terminate and he 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 fincinding, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sale 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 MUEL.

- 6. Technology Facilities Cooperation & Coordination by Master Developer.
 - (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Con 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 <u>Exhibit A</u> 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 Vistaocia 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 <u>Exhibit A</u>, and in no event shall a breach or default by an Owner of its obligations under any provision in <u>Exhibit A</u> 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) casements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
 - (d) No Obligation of Cex 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 exected 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.
 - 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. Con 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 Owners in the design and construction of the Technology Facilities described in <u>Exhibit B</u> 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 firmitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without Environment 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 is 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 Vistureia 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) Covernmental 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:
 - Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - 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

purchases/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchases/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchases/developer.

Payment Obligations. In consideration for marketing assistance and the other agreements of Master Developer and the Assess Entity hereunder. Con shall pay Master Developer a percentage fee as set forth below [Percentage fee]. Con shall pay Master Developer the Percentage fee as set forth below [Percentage fee]. Con shall pay Master Developer the Percentage fee ascording to the following scale based on the Penenation Percentage (as hereinafter defined) within each Building. The Percentage fee shall be calked (and paid by Con, if owrd pursuant to the provisions of this Section 1) 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 Con Communication Service (each such Building being hereinafter referred to as a "Qualifying Building."). As used herein, the term "Pencuration Percentage" shall mean, with respect to each Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Con Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total mantable square feet and has Owners, tenants and other occupants subscribing to Con Communication Services that occupy 85,000 square feet, then the Peneuration Percentage would be equal to 35% and Master Developer would receive a Percentage Fee equal to 3% of MRG with respect to the Qualifying Building.



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 Mester Developer shall be entitled to the higher Percentage Fee, which shall apply to all MRG attributable to that Qualifying Building. If the Penetration Percentage Gereases 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 chall 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 aincity (90) days from the end of the prior quarter. If Gos 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. Results 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 purty providers, to ollow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no overt chall the compensation received by Cox from such third party providers be deemed MIKC 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 Tuchnology Facilities as described above shall not be derived an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.

- 8. 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 <u>Exhibit D</u>.
 - (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 domage 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 Cax 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 therefore.
 - (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], notwinhstanding 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 ut to any cateat, except with respect to the reimbursement provisions of subsections (b) and (c) above to the cutent 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 maners 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. 31-Representations and Warranties
 - (a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:
 - (ii) 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 active asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) No Litigation. There is no (trigation 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 bereby 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, warrantes 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) Na 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 Emity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Emity.
 - (iii) No Cooffiet. 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 Firity 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 largation 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 bereamder, 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 <u>Section 11</u> 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 suns 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 porty shall be in "Performance Default" if the party fails to perform; any obligation bereunder 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 <u>Section 12</u>, 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 out, 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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (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 <u>Section 11</u> 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).
- 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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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.

- 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 determ 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
- (b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
 - 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 uncuted 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 aud/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 termove 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 "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancianet" from the property owned by Cox.

12. 14-Dispute Resolution Mechanisms.

The parties have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of disputes bereander. 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 assues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no exparte 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 Chaims, and by a representative of each party, who is outhorized 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 home equally by both parties. Upon a determination by the Mediator the 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 <u>subsections (b) or (c).</u>
- 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 Patent") 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 assignce 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.

Cox. Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access gramed 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 "Pareor") 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 er 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 Peuria, 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 mes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignce 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 bereto, 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.
- (e) 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) Unenforcesbility. 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, scams 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 en the

received facsimile, and served by certified or registered mail or by reliable overnight courier shall be detented 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.
- (b) 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 bereto 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.
- (b) Brokerage. Each party to this Agreement represents and worrants that it has not dealt with any seal 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 harmess 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.
- (I) 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 thring the Term
- (a) 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 nut 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 is 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 arbitratus.

- (e) 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 disclusive 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 traps of dedication, by labeling such easements as "DM_U.&S.S.E.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 Developes.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this <u>Amended and Restated</u> Property Access Agreement as of the date first written above.

	ELT-PLEASANT POINT VISTANCIA, une limited liability company
	nes Southwest, Inc., an Arizona on, its Member
By:	•
	leasant Point Investors, L.L.C., an imited liability company, its Member
	belt PP, LLLP, an Arizona limited ility limited partnership, its Manager
Ву:	Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner
	By:
Address:	6720 N. Scottsdale Road
	Suite 160
	Scottsdale, AZ \$5253
	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
	- Facsignile: (480) 367-2841
	COMMUNICATIONS, L.L.C., and diability company
By: Shee Sue Delawase	beh Picesont Point <u>Vistancia</u> , LLC, a
limited li	ability company, its Manager
	a Homes Southwest, Inc., an Arizona poration, its Member
By:	· ·

Cozeom Inc., a Delaware corporation,
d/b/a Cox Communications Phoenix

By:

J. Steven Rizley
General Manager and VP

Address: 20401North 29th Avernue

: Phoenix, AZ 85027
Phoen: (623) 322-7137
Facsimile: (623) 322-7918

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attr. General Counsel

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

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

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

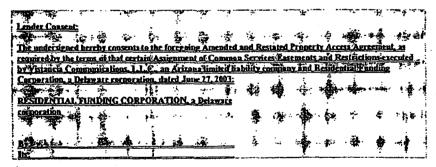
> > > 8y.

Curtis E. Smith, its Chief Operating Officer

Address:

6720 N. Scottsdale Road Suite 160 Scottsdale, A.7. 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



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EXHIBIT A

Contract Prevision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Amended and Restated Property Access Agreement dated 2003 with Coxcorn, Inc., a Delaware corporation dbba 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 reach 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 Penria, 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
- Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 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 moderns shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 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

- 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 Peoris 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
 - (c) Data Network Standards.
- 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 periods 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. <u>Comprehensive Liability</u>. 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.
- 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. <u>Automobile Liability</u> 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 bereunder, that insurance coverage required between its in force during the Term of this Agreement.

Shee Sundell Pleasant Point<u>Vistancia</u>, LLC & COXCOM, INC. <u>AMENDED AND RESTATED</u> CO-MARKETING AGREEMENT

RECITALS

- A. Wheresa the Master Developer, Cox, and the Access Entity have previously entered into that certain Co-Marketing Accessment dated April 8, 2083, 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.
- 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-sizes, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Amexation 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 contributements 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 unde in four equal payments of \$750,000,00 at the beginning of each quarter beginning April 1, 2003. As of the date of this Cota, Master Developer has paid to Cox three such installments in a total amount of \$1,125,000,00.
- <u>GE.</u> Whereas Coa has the legal authority, technical expertise, and the farancial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- DF. 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 J.Pt. of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.
- FG. Whereas the Master Developer intends to subject-all-ordan subjected a portion of the Development land 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 essement and access restrictions set forth in the Common Services Easements and Restrictions set be recorded—in the Office of the Recorder-for dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837706, official records of Maricopa County, State of Arizona (the "CNER"). The form of the CNER and the Non Eaclusive bicense shall be subject to review and approval by Cor prior to recordation thereof, which approval shall not be unreasonably withheld by Cor and shall be deemed given unless Con delivers to Master Developers its specific written objections to the proposed form of CNER (or Non-Eachsive-License, as applicable) within ten days after Master Developer's delivery thereof to Cox-Even though this CNA is being executed by the parties prior recordation of the CNER, this CNA shall in all events be subject and subordinanc to the CNER and the Access Entity's rights thereunder.

- FH Whereas the Master Developer has formed the Access Entiry 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.
- GL. Whereas, the Access Entiry agrees to grant Cox the Non-Exclusive License.
- High Whereas the Master Developer anticipates transferring development particles 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.
- 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 Emity and Cox agree as follows: and the Original CMA is hereby amended and restated in its entirety as beceingliter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superceded in its entirety by this CMA;

AGREEMENT

- 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 <u>Amended and Restated</u> 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.
- (b) "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.
- (I) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder-fordated June 19, 2003 and recorded June 27, 2003 in Instrument No. 2003-8837106, official records of Maricopa County, State of Arizona (the form of which shall be subject to review and approved 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, converter or ser-top boxes, cable moderns, 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 <u>Ethibit C</u> for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea-Sunbeh-Pleasant-Point<u>Vistancia</u>, 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.
- [5] "MURI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in [astrument No. 2003-0975499, official records of Maricopa County, Acizona, as as sended from time to time.

- (b) (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 planed lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereoa.
- (ii) (t)-"Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (Y) (a)—"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.
- [m] (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of thedated July 9, 2003 and recorded July 9, 2003, in <u>Instrument No. 2003-0898777.</u> official records of Maricopa County-Recordes, <u>Arizona</u>, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Comporation.
- (a) (w)-"Plst" 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 nights 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.
- (2) (2)-"Platted Easement Area" shall mean and refer to all of the drainage, withly and sanitary sewer easement area areas designated as D."M. U.-&-S.S.E." or "Multi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (2) (9)-"Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in <u>Exhibit D</u>, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (a2)(e)-"SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (hh)(so)-"Technology Pacilities" 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 transcrivers, 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.

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- (cc) (bb)-"Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- [ddb(ce)-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 coverants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (ce) (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 continuon, 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, lingation 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 anique 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
- (II) (oe)-"Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (gp) (f)-"Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (bh)(eg). "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.
- (3h)-"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 "linital Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the loitial Term, this CMA will automatically renew for successive terms of live years each (each such live 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 lainal Term (or the Renewal Term then in effect, as applicable). The linital Term and Renewal Terms are collectively referred to as the "Term." The linital Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

J. 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 Planted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intern 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 Revited S) 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 transferce who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2193.03 or any similar statute hereafter in effect without the prior consent of the thea current owner of such SFR or MFU.
 - (iii) Notwithstanding any other provision bereof, 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 Essement 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 crode 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 aud/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 cocuist 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 <u>Exhibit A</u>; 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 <u>Exhibit A</u>, 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 difigent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in <u>subsection 3(c)</u>.
- (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 nights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.
- L 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 MFt is 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 Mainlenance 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 Horne 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 Intal 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 extens 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 G (the "Marketing Compensation") will be poid to Master Developer for Master Developer's exclusive marketing and sales offorts on behalf of Cox. So long as Master Developer ns a majority vote in the Vistancia Maintenance Corporation, Con will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Data for Vistamin Maintenance Corporation, this CMA shall be essigned 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 Accordations) continues to perform the exclusive marketing obligations contained harain in conformance with the provisions herein, Cox shall pay the nce 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 Neighbothood Builders, or to other parties, through excrows 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 unital occupancy thereof.
- (c) Design & Installation Conditions. Con 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 Peon's 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 Buildet 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 Faciliaies 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, honds, 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 as all tisses 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 <u>Section 11</u>, 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 depost, 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.
 - (I) 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 Neighborhond 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 bone is

sold to an individual homebuyer), and to a computer provided by the Master Developer in the

(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 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 horses 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 \underline{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 cagage 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 servicin which 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 mattering compensation or license fees which, in the aggregate, allows a lower payment than its provided for Masketing Compensation under this CMA as ext-forth in Exhibit-Continent 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 Compensati this CMA as set forth in Exhibit Courseaut to Schedule J. II of the Non-Exchaire Licease (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. Coa, 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 pravision of bereal, this Section 5(2)(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)fiv)) upon (a) any termination of the CSER fincluding, 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 Fasements (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) Coa 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 <u>Exhibit C.</u>
- (e) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in <u>Babibit G</u>, during the Term of this CMA; provided no Marketing Compensation shall be payable ofter 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.
- (c) [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 lifteenth 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) Misster Developer Autilit 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 Contregarding the value of consumer subscription to Communication Services for the period sovered by such payment of Marketing Compensation to verify the amount of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business house 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 ouditor. Unless required by low 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 underpoid by more than \$%, the audited party shall reunburse 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 <u>Exhibit B</u> 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 substitutially the form of <u>Exhibit A</u> attached hereto in each purchase agreement or option agreement 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 acrow 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 <u>Exhibit A</u>. 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 <u>Exhibit A</u>, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision under any provision in <u>Exhibit A</u> 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 Vistoncia.
- (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 in 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) encement of construction of the trench that requires any such Additional Treaching. 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 <u>Exhibit B</u> for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through excrows that close during the Term of this

CMA, (ii) commence and complete its design, construction and installation obligations in a tirrely 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 Tochnology 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, zuning 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:
 - 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 <u>Exhibit F.</u>
 - (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 Con 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) Walver 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 <u>subsection (a)</u>, 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 <u>subsections (b) and (c)</u> above to the extent not covered by insurance; and the parties bereto acknowledge and agree that the intent of this provision is to eliminate any tisk 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 <u>subsections (b) and (c)</u>.
- 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, caccutes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
 - (iii) No Canflict. 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 covernants 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 stables 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 Delawate, 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 covernants 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 impose 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 Anthority. 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, defiver 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 <u>Section 11</u> 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 beccunder 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 <u>Section 12</u>, 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 <u>Section 12</u>. The mon-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 <u>Section 12</u>.

- (d) Cos 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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (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 <u>Section 12</u>.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this <u>Section 10</u>.
- (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 <u>Section 2</u> or termination as permitted under <u>Section 10</u>, 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 an 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 audior 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 destruination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiale 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 fist 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 kimited to, any termination due to uncured defaultly. (A) the Non-Exchasive 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 emer 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 navable 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 accepted in respect of such Communication Service(s)

but annual 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 Entiry. 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 facting in its own canacity and/or through one or more Vibrae Associations) does not terminate this CMA (and continues to Deviarm under this CMA). Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

- (d) (e)-Unwinding. Upon the capitation 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, Visitancia 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 shell 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 at demand for mediation has been filed, there shall be no exparte 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 white 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 must 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 introductions 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. 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.
- (c) 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 <u>subsections (b) or (c).</u>
- (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 Coa, 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 "Parcest") or in which Cox or a Parcest 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 assignce signs and delivers to Master Developer a document in which the assignce mes 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 bereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easenients 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 disbuttements (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 count, 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.

- (c) 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 furth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmissions 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, and 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 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 acr, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impoir any right, remedy or power of such party bereunder, or to refieve 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 surier 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.
- (1) 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 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.
- (a) 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 phisal, 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 Con 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 quasti-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, rolings and other official pronouncements of any governmental authority and all decrees, rulings, jurigments, 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 bereio 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 bereof. 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 recipients 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 "P.M.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 <u>Amended and Restated</u> Co-Marketing Agreement as of the date first written above.

Master Developer** ddress: 6720 N. Scottsdale Road		SHEA SUMBELT PLEASANT PODITYISTANCIA. LLC, a Delaware limited liability company	
	Suite 160	By: Shea Homes Southwest, Inc., an Arizona	
	Scottsdale, AZ 85253	corporation, its Member	
	Phone: (480) 905-0770		
	Facsimile: (480) 905-1419		
		Ву:	
	and required copy to	lts:	
	8800 N. Gainey Center Drive		
	Seite 370	By: Sunbelt Pleasant Point Investors, L.L.C., an	
	Scottsdale, AZ. 85258	Arizona limited liability company, its Member	
	Phone: (480) 367-7600		
	Facsimile: (480) 367-2841	By: Sunbelt PP, LLLP, an Arizona limited	
	(,	liability limited partnership, its Manager	
		By: Sunbelt Holdings Management, Inc.,	
		an Arizona corporation, its General	
		Partner	
	- · ·	Ву:	
-		Curtis E. Smeth, its Chief	
		Operating Officer	
Cox*		COXCOM, INC., a Delaware corporation,	
CUL		d/b/a COX COMMUNICATIONS Phoenix	
.ddress:	20403 N. 29th Avenue		
	Phoenix, AZ 85719		
	F HOCIBIC, PAZ 03719	Ву:	
		J. Steven Rizley	
		General Manager and VP	
Access Entity*		VISTANCIA COMMUNICATIONS, L.L.C., as	
		Arizona limited liability company	
ddress:	6720 N. Scottsdale Road	· · · · · · · · · · · · · · · · ·	
	Suite 160	By: Shea-Sunbalt Pleasant Point Vistancia, LLC, a	
	Sconsdale, AZ 85253	Delaware	
	Phone: (480) 905-0770	limited liability company, its Manager	
		minico impinit confinit, io insuraci	
	Facsimile: (480) 905-1419	Down Character Construent Language Authority	
		By: Shea Homes Southwest, Iuc., an Arizona	
	and required copy to	corporation, its Member	
	8800 N. Gainey Center Drive		
	State 370	_	
	Sconsdafe, AZ 85258	Ву.	
	Phone: (480) 367-7600	lts:	
	Phone: (480) 367-7600 Facsimile: (480) 367-2841	ile:	
	* *	By: Sunbelt Pleasant Point Investors, L.L.C., a	

Member

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

By: Sunhelt Holdings Management, inc., an Arizona corporation, its General Partner

> By: Cartis E. Smith, its Chief Operating Officer

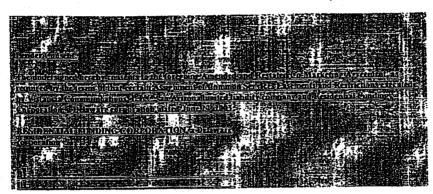


EXHIBIT A

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 putsuant 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 fi.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 APS plans therefor, and (ii) the building sleeves from untity 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 opnon agreement.]

EXHIBIT A
Page 1

EXHIBIT A Page 2

EXHIBIT R

Technology Facilities

Technology Facilities shall be designed and installed to meet the following minimum requirements:

- 1) Network:
 - 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-point trench coordination efforts with Vistancia and other expected utilities is essential to limit post-loint 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.
- Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality,
 of analog and digital cable programming.
- Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 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 moderns 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 Gearanter: 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 B Page 1

EXHIBIT C

Cox Digital Community Marketing & Promotion Programs

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:

- Support the cost to develop and print ensuranced 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.
- 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 prumotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party cobranded 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/ Buildes/ Cox Partnership, highlighing 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) alt 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 brochutes, packages and other collateral underials for Vistancia that will reference Vistancia pattnership 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 Page 1

- (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;
- 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;
- (b) 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 escribe package and/or New Homeowners welcome folders:
- 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;
- (1) 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:
 - 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;
 - 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;
 - 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 parkages 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

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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 coan (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 amicipated 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).

EXHOBIT D

EXHIBIT E

Technology & Service Standards

- Standards. Con 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.
- 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 moderns 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 enstoner-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is emitted to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is rearndated by the Franchise authorities to notify the Franchise authorities to 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 Page 1

FYHIRIT F

Insurance Requirements

Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

- 1. <u>Comprehensive Limitity.</u> 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 himit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
- 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. <u>Automobile Liability.</u> 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. <u>General Provisions</u>. 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 thon 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 because it in force during the Term of this Agreement.

EXHIBIT C

Marketing-Compensation-Schedule

Con will pay Master Developer the sum of Five Hundred Thousand and Nov100 Deltars (\$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 Devoloper the sum of Five Hundred Thousand and No/100 Dullars (\$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.

Con-will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Con'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 bones passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cablo Television Service, Telephone Service (encluding 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 routed, television guides, tones, assessments, and literace fees.

Penchation Payout 75% 79% 15% 80% 85% 16%

EXHUBIT F

\$6%,90% 11% 1,90%,95% 13%,18%,18% 96%,100% 20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own ment to order to qualify for marketing compensation.

EXHIBIT F Page 2

From:

Trickey, Linda (CCI-Allanta)

Sent:

Wednesday, October 01, 2003 10:37 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.

----Original Message----

Prom: Lesa J. Storey [mailto:lstorey@sbplc.com] Sent: Monday, September 29, 2003 3:47 PM

To: Trickey, Linda (CCI-Atlanta)

RE: Vistancia Subject:

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.

Lesa 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

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 Hednesday, 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

2

Hayes, Yvonne (CCI-Atlanta)

From:

Trickey, Linda (CCI-Atlanta)

Sent:

Monday, October 06, 2003 11:36 AM

To: Subject:

Lesa J. Storey 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)

RB: 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 AN

Subject: RE: Vistancia [mx]

Lega,

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)

RB: Vistancia Subject:

Thursday from 10:30 am to 2:00 pm would not work; any other time is

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

amall

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

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

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----

Prom: 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.

Lesa J. Storey Storey & Burnham PLC 3030 8. Camelback Road Suite 265 Phoenix, AZ 85016 Main Line: (602) 468-0111 Direct Line: (602) 522-0202 Pax Line: (602) 468-1335 email: lstorey@sbplc.com

----Original Message----Prom: 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 Mednesday, 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

Hayes, Yvonne (CCI-Atlanta)

From:

Trickey, Linda (CCI-Allania)

Sent:

Thursday, October 09, 2003 5:01 PM

To: Subject: . Lesa J. Slorey 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 Patter 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 them 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]

You may want to double-check the dollar amounts that Developer has already paid Cox. 1 think the \$1,125,000 is incorrect, considering there should have been three payments of \$750,000 each. Thanks.

f.inda

----Original Message----

From: Lesa J. Storey [mailto:lstorey@sbplc.com] Sent: Monday, September 29, 2003 3:47 PM

To: Trickey, Linda (CCT-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.

Lesa J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Main Line: (602) 468-011i
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@sbple.com Subject: Vistancia

Lesa,

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I look forward to hearing from you. Thanks.

Regards,

Linda Trickey Corporate Counsel Cox Communications

From:

Trickey, Linda (CCI-Atlanta)

Sent:

Thursday, October 09, 2003 6:15 PM

Lesa J. Storey

RE: Vistancia

It was not one of our corporate counsel, so I am asking around. If necessary I will call Mike myself.

----Original Message-----

Lesa J. Storey [mailto:lstorey@sbplc.com]

Sent: Thursday, October 09, 2003 1:50 PM

To: Trickey, Linda (CCI-Atlanta) RE: Vistancia

Lieda,

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,

----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]

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

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 602-522-6202). 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.

Lesa J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AZ 85016
Maim Line: (602) 468-0111
Direct Line: (602) 522-0202
Pax 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

Hayes, Yvonne (CCI-Atlanta)

From:

Trickey, Linda (CCI-Atlanta)

Sent

Friday, October 10, 2003 3:54 PM

To: **Subject**: Lesa J. Storey **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)

FW: Cox Agreements Subject:

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 Neesage----From: Cindy Voelz

To: Mark Hammons

Cc: Lesa Storey (E-mail)

Sent: 10/10/03 8:09 AM

Subject: RB: Cox Agreements [mx]

Here is the information that you requested:

1st payment (due 4/1/03):

3/25/03 Check #1224

\$750,000

2nd payment (due 7/1/03):

6/25/03 Check #1779

\$750,000

3rd payment (due 10/1/03):

9/25/03 Check #2142

\$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 Nessage----

Prom: Lesa J. Storey [mailto:lstorey@sbplc.com]

Sent: Thursday, October 09, 2003 5:28 PM

i ziniah

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 Cook's in-house attorney) think something is off.

So, please let me know the correct number.

Thanks,
Lesa J. Storey
Storey & Burnham PLC
3030 E. Camelback Road
Suite 265
Phoenix, AE 85016
Main Line: (602) 468-0111
Direct Line: (602) 522-0202
Fax Line: (602) 468-1335
email: lstorey@sbplc.com

Hayes, Yvonne (CCI-Atlanta)

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 Nike Patten to call me. Any new developments?

----Original Message----

Prom: Lesa J. Storey [mailto:lstorey@sbplc.com] Sent: Friday, October 10, 2003 4:43 PM To: Trickey, Linda (CCI-Atlanta) RB: Cox Agreements Subject:

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

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-----

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----

Prom: 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:

3/25/03 1st payment (due 4/1/03): Check #1224

\$750,000 2nd payment (due 7/1/03):

6/25/03

\$750,000

Check #1779

Check #2142

9/25/03

3rd payment (due 10/1/03): \$750,000

This leaves one remaining payment due on 1/1/04.

1

Thanks Cindy Voelz Vistancia, LLC Project Controller

----Original Message----

Pron: Mark Hammons

Sent: Thursday, October 09, 2003 6:28 PM

To: Cindy Voelz

Subject: PW: Cox Agreements

Could you please look into this

Thanks

----Original Message----

Prom: 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

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3030 B. 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

From: Sent: To: Cc:

Subject:

Trickey, Linda (CCI-Atlanta)
Wednesday, October 22, 2003 11:28 AM
Christle, Tisha (CCI-Phoenix)
Kelley, Mary (CCI-Phoenix)
RF: Revised Agreements

Redacted

Prom: Christle, Tisha (CCI-Phoenix)
Sent: Friday, October 03, 2003 12:02 PM
To: Trickey, Linda (CCI-Atlanta)
Cc: Kelley, Mary (CCI-Phoenix)
Subject: PW: Revised Agreements

<< Pile: 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 NonExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 NonExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc >> << File:
DVComparison_ACM_cox_comm_5 Vistancia commercial final redline (04-04-03)-ACM_cox_comm_6
Vistancia commercial amd restated (09-25-03)1.doc >> << File: DVComparison_ACM_cox_comm_6
Vistancia residential final redline (04-04-03)-ACM_COX_7 Vistancia residential amd
restated (09-25-03).doc >> Linda,

Redacted

Tisha Christle Sr. Account Executive 623-322-7857 Tisha.Christle@Cox.com

-----Original Mcssage---From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Friday, October 03, 2003 8:57 AM
To: Christle. Tisha (CCI-Phoenix)
Subject: FW: Revised Agreements

> ----Original Message---> Prom: Cutt 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.

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_6 Vistancia commercial and restated (09-25-03)1.doc>> > <<DVComparison_AGM cox_comm_6 Vistancia residential final redline (04-04-03)-AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential and restated (09-25-03).doc>>

These move all financial payments from Cox to the License Agreements. Please review these

C02261

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-Harketing 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,

Lesa J. Storey

Storey & Burnham PLC

3030 E. Camelback Road

Suite 265

Phoenix, AZ 85016

Main Line: (602) 468-0111

COX012555

Vistancia/Cox Agreements

Page 1 of 2

Kelley, Mary (CCI-Phoenix)

From: Trickey, Linda (CCI-Atlanta)

Sent:

Monday, December 01, 2003 7-39 AM

To.

Christle, Tisha (CCI-Phoenix); Kelley, Mary (CCI-

Dryer, Patrick (CCI-Phoenix)

Subject: FW: Vistancia/Cox Agreements

REDACTED

--- Original Message-

From: Lesa). 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

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.

Lesa J. Storey Storey & Burnham PLC 3030 E. Camelback Road Suite 265 Phoenix, AZ, 85016 Main Line: (602) 468-0111

12/1/2003

Vistancia/Cox Agreements

Page 2 of 2

Direct Line: (602) 522-0202 Fax Line: (602) 468-1335 email: Istorey@sbptc.com

<Final Amended and Restated Commercial pdf>> <<Final Amended and Restated Residential.pdf>> <<Final Commercial Sublicense.pdf>> <<Final Residential Sublicense.pdf>></Final Residential Sublicense.pdf>>

12/1/2003

T-03471A-05-0064

PART 1 OF 2 BAR CODE # 0000046239

To review Part 2 please see:

BAR CODE #0000049726