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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
MARC SPITZER
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES

565A

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

DOCKET NO. T-03471A-05-0064

NOTICE OF FILING SETTLEMENT AGREEMENT

Cox Arizona Telcom, LLC, through undersigned counsel, hereby files the Settlement Agreement, including all exhibits thereto, between Accipiter Communications, Inc., Cox Arizona Telcom, LLC, CoxCom, Inc., Vistancia, LLC and Vistancia Communications, LLC, except that the amount paid to Accipiter under the Settlement Agreement has been redacted.

RESPECTFULLY SUBMITTED this 14th day of December 2005.

COX ARIZONA TELCOM, LLC

By  for

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

Attorneys for Cox Arizona Telcom, LLC

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 DEC 14 P 2:29

RECEIVED

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TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Original and 13 copies of the foregoing
2 filed this ~~14th~~ day of December 2005 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this ~~14th~~ day of December 2005 to:

9 Chairman Jeff Hatch-Miller
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Commissioner Marc Spitzer
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Commissioner William A. Mundell
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Arizona Corporation Commission
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Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016

By Mary Spolits

SETTLEMENT AGREEMENT

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

I. DEFINITIONS

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

5. As used herein, "CMA" refers to the Amended and Restated Co-Marketing Agreement between Developer, VC, LLC, and CoxCom, dated September 25, 2003.
6. As used herein, "Cox" refers to Cox Telcom and CoxCom.
7. As used herein, "CoxCom" refers to CoxCom, Inc., a Delaware corporation.
8. As used herein, "Cox Telcom" refers to Cox Arizona Telcom, LLC, a Delaware limited liability company.
9. As used herein, "Developer" refers to Vistancia LLC (fka Shea Sunbelt Pleasant Point, LLC), a Delaware limited liability company.
10. As used herein, "MOU" refers to the Memorandum of Understanding entered into by the Parties, dated September 1, 2005.
11. As used herein, "MUEs" refer to the Multi-Use Easements which have been designated on plats and maps and other instruments pertaining to the Vistancia development.
12. As used herein, "NELA" refers to a Non-Exclusive License Agreement.
13. As used herein, "PAA" refers to the Amended and Restated Property Access Agreement between Developer, VC, LLC and CoxCom, dated September 25, 2003.
14. As used herein, "Parties" refers collectively to Accipiter, Developer, VC, LLC, Cox Telcom, and CoxCom.

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

II. RECITALS

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

2. On January 31, 2005, Accipiter filed the ACC Action against Developer, VC, LLC and Cox Telcom alleging violations of ACC rules and provisions of certain statutes in Title 40 of the Arizona Revised Statutes.

3. Cox and Vistancia dispute and deny the claims asserted against them in the Superior Court Action and ACC Action.

4. By entering into this Agreement, the Parties intend to compromise fully and settle all claims between and among the Parties including but not limited to those claims set forth in the Superior Court Action and the ACC Action, and the Parties intend this Agreement to be binding regardless of any action the ACC may take.

III. AGREEMENTS

1. Conversion of Private Easement to Public Utility Easement

- a. Vistancia and Cox shall execute all documents and shall take the steps necessary to convert the MUEs at the Vistancia Development to PUEs. The Parties have reviewed the form of multiple documents, identified below as Exhibits, which they agree will accomplish the MUE-to-PUE conversion process. These MUE to PUE conversion documents include the following: Termination of Common Services Easements and Restrictions; Termination of Multi-Use Easement and Indemnity; Termination of Non-Exclusive License Agreement (re Property Access Agreement); Termination of Non-Exclusive License Agreement (re Co-

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

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

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

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

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

2. Provision of Conduit and Land to Accipiter

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

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

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

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

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

3. Provisions of Telephone Resale to Accipiter

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

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

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

4. Cancellation of Cox/Developer Exclusive Marketing Arrangements

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

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

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

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

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

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

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

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

conditions and restrictions recorded in relationship to the Vistancia Development.

5. Payment to Accipiter

Cox and Developer shall jointly and severally pay in good funds to Accipiter the amount of

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 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 with interest shall be released to Accipiter from the escrow immediately upon the occurrence of the following:

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

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

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

6. Mutual Release

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

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

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

7. No Precedential Effect

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

8. Confidentiality

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

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

9. Other Regulatory Proceedings

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

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

10. Breach of Agreement

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

11. Warranty of Capacity to Execute

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

12. Unknown Claims

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

13. Fees and Costs

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

14. Notices

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

If to Accipiter:

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

If to CoxCom and/or Cox Telcom:

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

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

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

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

15. Acknowledgement of Disputed Liability

This Agreement is made as a compromise and settlement of disputed claims, liability for which is expressly denied by Cox and Vistancia.

Nothing herein shall or can be construed as an admission by Cox or Vistancia as to the merits of any claim asserted against them.

16. Authority

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

17. Binding Effect

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

18. Counterparts

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

19. Controlling Law

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

20. Contractual Terms

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

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

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

21. Further Instruments and Acts

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

22. Continuing Nature of Representations

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

EXECUTED as of the Effective Date set forth above.

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation

By Charles Gowder
Charles Gowder
President & CEO

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

By: _____
J. Stephen Rizley
General Manager and VP

21. Further Instruments and Acts

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

22. Continuing Nature of Representations

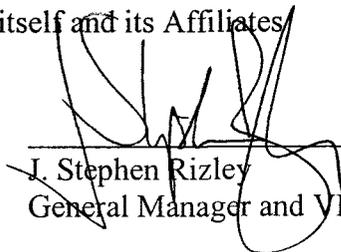
The Parties agree that any and all representations and warranties made in this Agreement are true and correct on the date hereof, will be true and correct as of the date of performance hereunder, and shall survive the Parties' full performance of this Agreement.

EXECUTED as of the Effective Date set forth above.

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation

By _____
Charles Gowder
President & CEO

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

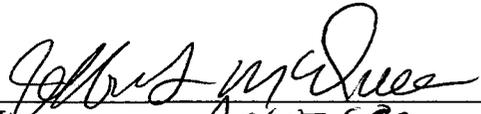
By: _____

J. Stephen Rizley
General Manager and VP

COX ARIZONA TELCOM, LLC,
a Delaware limited liability company

By: _____
J. Steven Rizley
General Manager and VP

VISTANCIA, LLC, a Delaware limited liability company

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

By: 
Its: ASST SEC

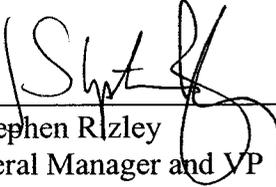
By: Sunbelt Pleasant Point Investors, L.L.C., an
Arizona limited liability company, its Member

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

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

By: 
Curtis E. Smith, its Chief
Operating Officer

COX ARIZONA TELCOM, LLC,
a Delaware limited liability company

By: 

J. Stephen Rizley
General Manager and VP

VISTANCIA, LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

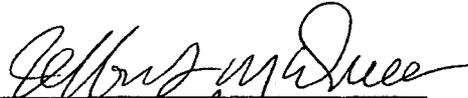
By: Sunbelt Holdings Management, Inc.,
an Arizona corporation, its General Partner

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

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

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

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

By: 
Its: ASST sec

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

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

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

By: 
Curtis E. Smith, its Chief Operating Officer

LIST OF EXHIBITS

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

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

1

A

WHEN RECORDED RETURN TO:

EXHIBIT "1A"

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

**TERMINATION
OF
COMMON SERVICES EASEMENTS AND RESTRICTIONS**

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

RECITALS

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

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

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

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

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

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

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

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

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

[NO FURTHER TEXT ON THIS PAGE]

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

ACCESS ENTITY:

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

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

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

By: _____
Its: _____

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

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

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

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

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

B

WHEN RECORDED RETURN TO:

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

TERMINATION OF MULTI-USE EASEMENTS AND INDEMNITY

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

RECITALS

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

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

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

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

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

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

CITY:

CITY OF PEORIA, ARIZONA, an Arizona
chartered municipal corporation

ATTEST:

By: _____
John Keegan, Mayor

Mary Jo Kief, City Clerk

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

Stephen Kemp, City Attorney

ACCESS ENTITY:

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

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

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

By: _____
Its: _____

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

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

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

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

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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

Notary Public

My commission expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

C

WHEN RECORDED RETURN TO:

EXHIBIT "1C"

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

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

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

RECITALS

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

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

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

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

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

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

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

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

ACCESS ENTITY:

COX:

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

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

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

By: _____
Its: _____

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

By: _____
Its: _____

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

D

WHEN RECORDED RETURN TO:

EXHIBIT "1D"

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

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

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

RECITALS

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

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

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

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

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

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

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

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

ACCESS ENTITY:

COX:

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

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

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

By: _____
Its: _____

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

By: _____
Its: _____

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

E

WHEN RECORDED RETURN TO:

EXHIBIT "1E"

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

ROADWAY AND UTILITY EASEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

a. All Facilities shall be installed underground.

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

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

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

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

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

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

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

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

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

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

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

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

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

ACCESS ENTITY:

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

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

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

By: _____
Its: _____

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

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

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

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

MASTER DEVELOPER:

VISTANCIA, LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

CITY ACCEPTANCE PAGE

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

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

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

CITY OF PEORIA, ARIZONA, an Arizona
municipal corporation

John C. Keegan, Mayor

ATTEST:

Mary Jo Kief, City Clerk

VISTANCIA MAINTENANCE CORPORATION CONSENT

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

VISTANCIA MAINTENANCE CORPORATION, an Arizona
non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

VILLAGE ASSOCIATION CONSENT

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

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

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

VILLAGE ASSOCIATION CONSENT

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

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

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

17805-1/1307019

EXHIBIT A

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT B

Existing Plats and Maps

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

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

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

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

EXHIBIT C

Roadway Tracts

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

Plat/Map ¹	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]**

F

When recorded, return to:

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

EXHIBIT "1F"

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

RECITALS:

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

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

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

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

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

AMENDMENT:

NOW THEREFORE, the Declaration is hereby amended as follows:

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

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

2.1. in Section 3.1 of the Declaration:

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

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

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

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

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

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

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

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

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

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

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

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

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

2.10 in Section 10.6 of the Declaration:

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

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

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

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

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

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

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

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

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

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

[NO FURTHER TEXT ON THIS PAGE]

CERTIFICATION:

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

ATTEST:

I, the undersigned, do hereby attest:

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

VISTANCIA DECLARANT CONSENT

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

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

ACCESS ENTITY CONSENT

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

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

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

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

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

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

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

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

17805-1/1307028

G

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

EXHIBIT "1G"

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

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

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

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

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

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

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

[Signature appears on following page]

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

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

17805-1/1307029

EXHIBIT A
(see attached)

2

WHEN RECORDED RETURN TO:

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

EXHIBIT "2"

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2005

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

State of Organization: Arizona

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

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

State of Organization: Delaware

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

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

State of Organization: Nevada

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

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

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

ARTICLE I - RECITALS

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

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

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

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

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

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

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

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

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

ARTICLE II - LICENSE

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

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

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

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

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

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

ARTICLE III - INDEMNIFICATION AND RIGHT TO DEFEND

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

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

ARTICLE IV - AGREEMENTS BENEFITING THE CITY

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

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

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

ARTICLE V - NOTICES

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

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

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

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

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

LICENSOR

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

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

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

By: _____
Its: _____

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

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

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

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

LICENSEE

ACCIPITER COMMUNICATIONS
INCORPORATED, a Nevada corporation

By: _____
Its: _____

MASTER DEVELOPER

VISTANCIA, LLC, a Delaware limited liability company

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

**By: _____
Its: _____**

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

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

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

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

Schedule: 1.01 Other Easements or Licenses (See Attached)

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

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

Notary Public

My Commission Expires:

SCHEDULE 1.01

Other Easements or Licenses

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

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

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

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

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

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

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

Existing Plats and Maps

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

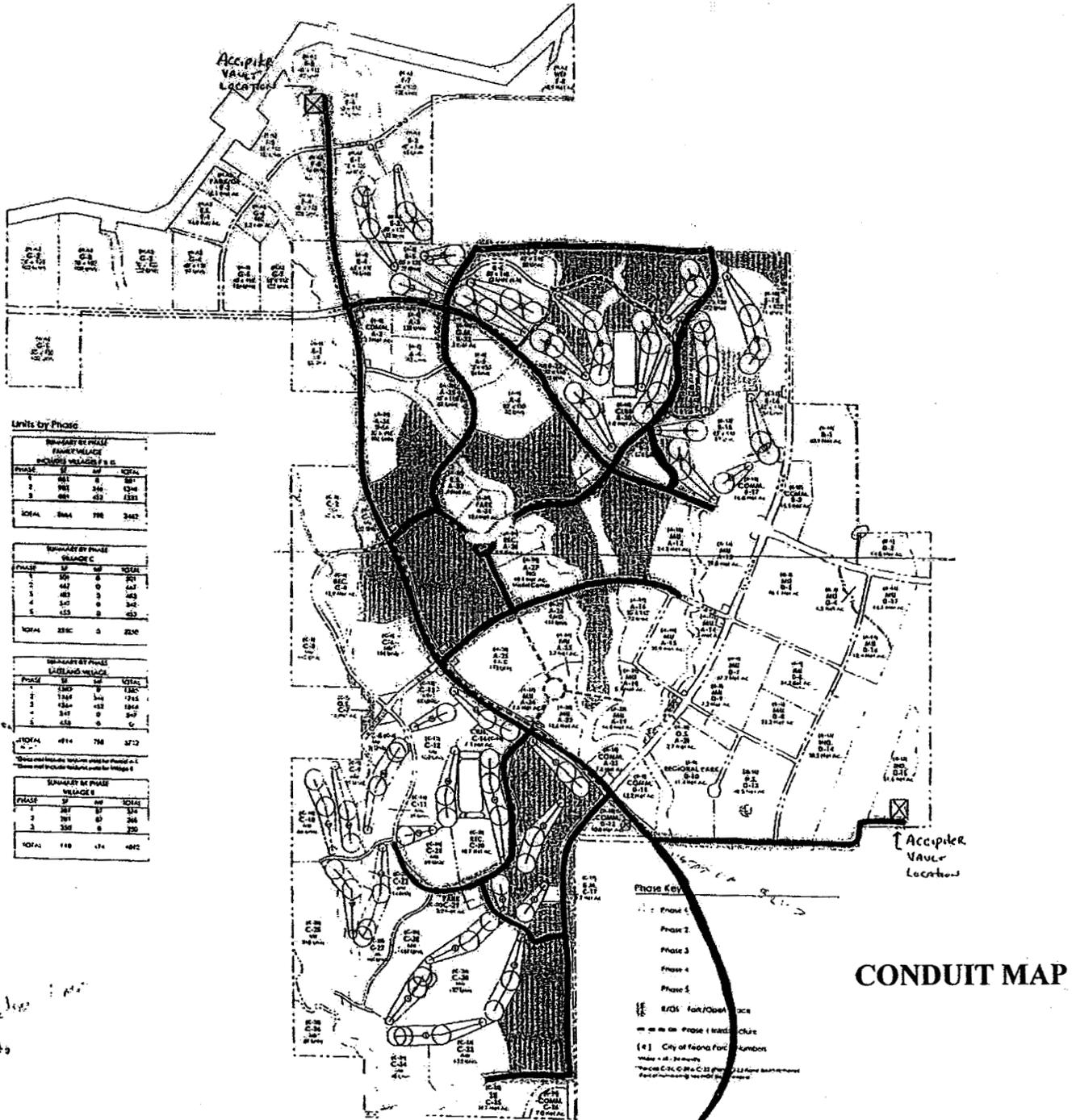
Title	Recording Information (Official Records of Maricopa County)
Final Plat of Vistancia Village A Parcel A1	Book 719 of Maps, page 31
Final Plat of Vistancia Village A Parcel A7	Book 719 of Maps, page 33
Final Plat for Vistancia Village A Parcel A8	Book 719 of Maps, page 30
Final Plat of Vistancia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

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

17805-1/1306277v4

3

EXHIBIT "3"



CONDUIT MAP

Units by Phase

PHASE 1			
PHASE	SP	AP	TOTAL
1	981	0	981
2	981	346	1327
3	481	452	933
TOTAL	2443	798	3241

PHASE 2			
PHASE	SP	AP	TOTAL
1	501	0	501
2	447	0	447
3	483	0	483
4	505	0	505
5	153	0	153
TOTAL	2089	0	2089

PHASE 3			
PHASE	SP	AP	TOTAL
1	1280	0	1280
2	1346	344	1724
3	1264	152	1416
4	517	0	517
5	458	0	458
TOTAL	4914	496	5410

PHASE 4			
PHASE	SP	AP	TOTAL
1	267	0	267
2	281	0	281
3	336	0	336
TOTAL	884	0	884

Phase Key

- Phase 1
- Phase 2
- Phase 3
- Phase 4
- Phase 5
- ERT/ fork/Overpass
- Phase 1 Interchange
- (*) City of Feoria Parcel Number

Scale = 1" = 20' approx.
 *Phase 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

ACCIPTER COMMUNICATIONS
6-JUL-05

PROPOSED
X CENT or BUILDING LOCATIONS

SHEA / SUNBELT PROPERTY
LAKELAND VILLAGE - PHASING MAP

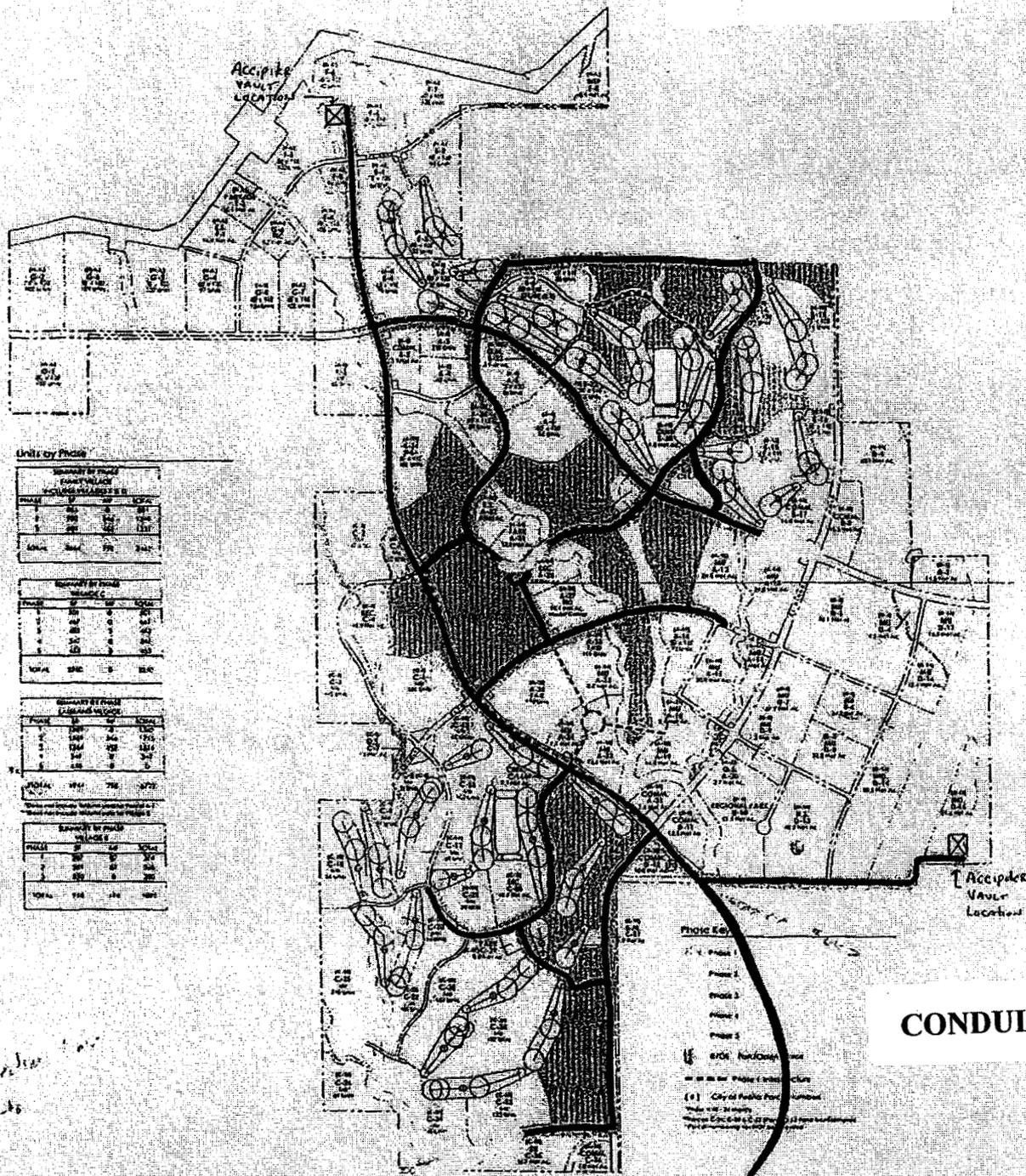


Cox Vauer
X
503 ALIGNMENT

4

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.



Units by Phase

Phase	Units	Units	Units
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
Total	1000	1000	1000

Phase	Units	Units	Units
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
Total	1000	1000	1000

Phase	Units	Units	Units
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
Total	1000	1000	1000

Phase	Units	Units	Units
1	100	100	100
2	200	200	200
3	300	300	300
4	400	400	400
5	500	500	500
Total	1000	1000	1000

CONDUIT MAP

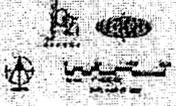
- PHOTO KEY
- 1 - Phase 1
 - 2 - Phase 2
 - 3 - Phase 3
 - 4 - Phase 4
 - 5 - Phase 5
- ACCIPITER VAULT LOCATION
 PROPOSED CENTER OF BUILDING LOCATIONS
 CITY OF PALM BEACH
 PALM BEACH COUNTY
 STATE OF FLORIDA
 FEDERAL GOVERNMENT

7/2/05
30

ACCIPITER COMMUNICATIONS
6-JUL-05

PROPOSED CENTER OF BUILDING LOCATIONS

SHEA / SUNBELT PROPERTY
LAKELAND VILLAGE - PHASING MAP



Cox
303 Alignment

5

A

WHEN RECORDED, RETURN TO:

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

EXHIBIT "5A"

DECLARATION OF DE-ANNEXATION
(Vistancia)

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

RECITALS

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

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

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

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

DECLARATION

NOW, THEREFORE, Declarant hereby declares as follows:

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

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

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

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

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

STATE OF ARIZONA)
)ss.
County of Maricopa)

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

My commission expires: _____
Notary Public



Stanley Consultants INC

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

EXHIBIT A

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

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

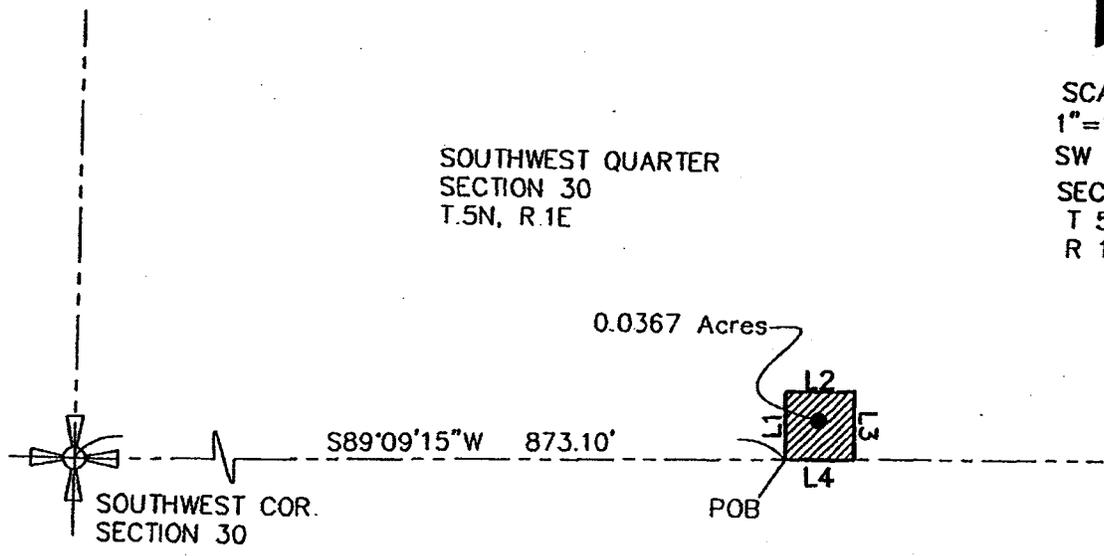


Q:\16048\Survey\Village D Plats\Unit D-13\Documents\Southern Parcel.doc



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

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



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



Vistancia

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

B

When recorded, return to:

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

EXHIBIT "5B"

DECLARATION OF PROPERTY DEVELOPMENT RESTRICTIONS

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

RECITALS:

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

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

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

DECLARATIONS:

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

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

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

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

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

6. Environmental Compliance.

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

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

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

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

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

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

with required copy to:

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

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

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

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

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

16. Definitions.

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

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

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

DECLARANT:

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

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

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

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

By: _____
Curtis E. Smith, Chief
Operating Officer

STATE OF ARIZONA)
) ss
County of Maricopa)

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

Notary Public

My Commission Expires:

EXHIBIT A

(Legal Description of Property)



Stanley Consultants INC

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

EXHIBIT A

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

LEGAL DESCRIPTION

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

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

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

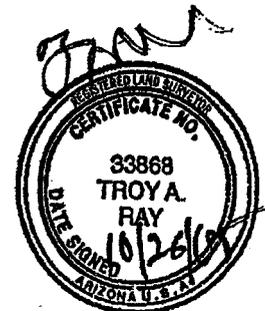
Thence N 89°09'15" E a distance of 40.00 feet;

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

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

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

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

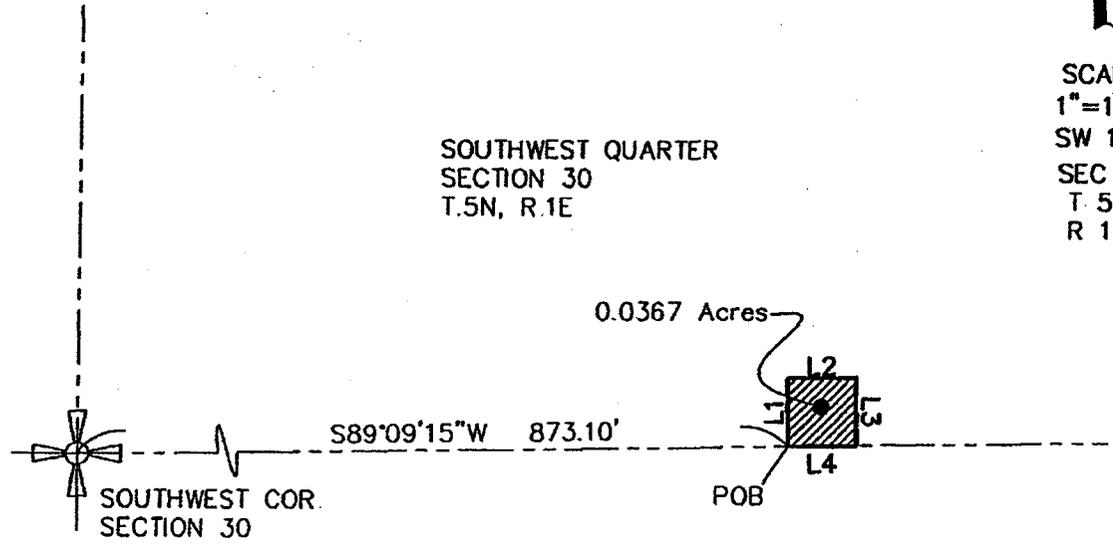


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SCALE:
 1"=100'
 SW 1/4
 SEC 30
 T 5 N
 R 1 E

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



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



Vistancia

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

C

When Recorded, Mail to:

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

EXHIBIT "5C"

SPECIAL WARRANTY DEED

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

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

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

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

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

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

By: _____

Curtis E. Smith

Its: Executive Vice President

STATE OF ARIZONA)
) Ss.
County of Maricopa)

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

Notary Public

My Commission Expires:



Stanley Consultants INC.

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

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

EXHIBIT A

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

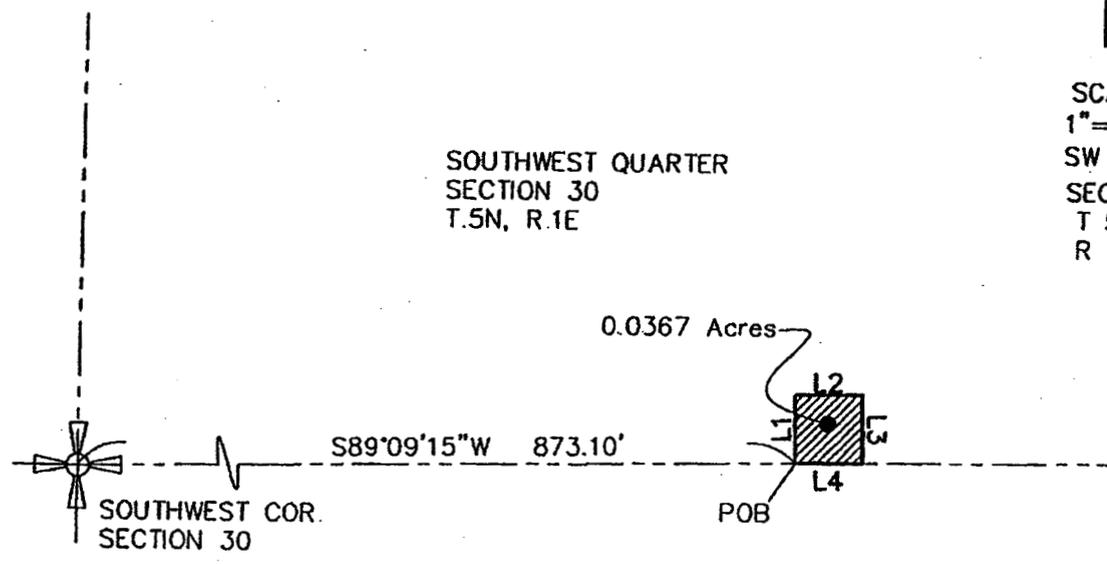


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SCALE:
1"=100'
SW 1/4
SEC 30
T 5 N
R 1 E

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



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



Vistancia

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

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.

D

WHEN RECORDED, RETURN TO:

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

EXHIBIT "5D"

DECLARATION OF DE-ANNEXATION
(Vistancia)

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

RECITALS

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

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

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

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

DECLARATION

NOW, THEREFORE, Declarant hereby declares as follows:

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

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

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

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

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

STATE OF ARIZONA)
)ss.
County of Maricopa)

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

My commission expires:

Notary Public



Stanley Consultants INC.

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

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

EXHIBIT A



LEGAL DESCRIPTION

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

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

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

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

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

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

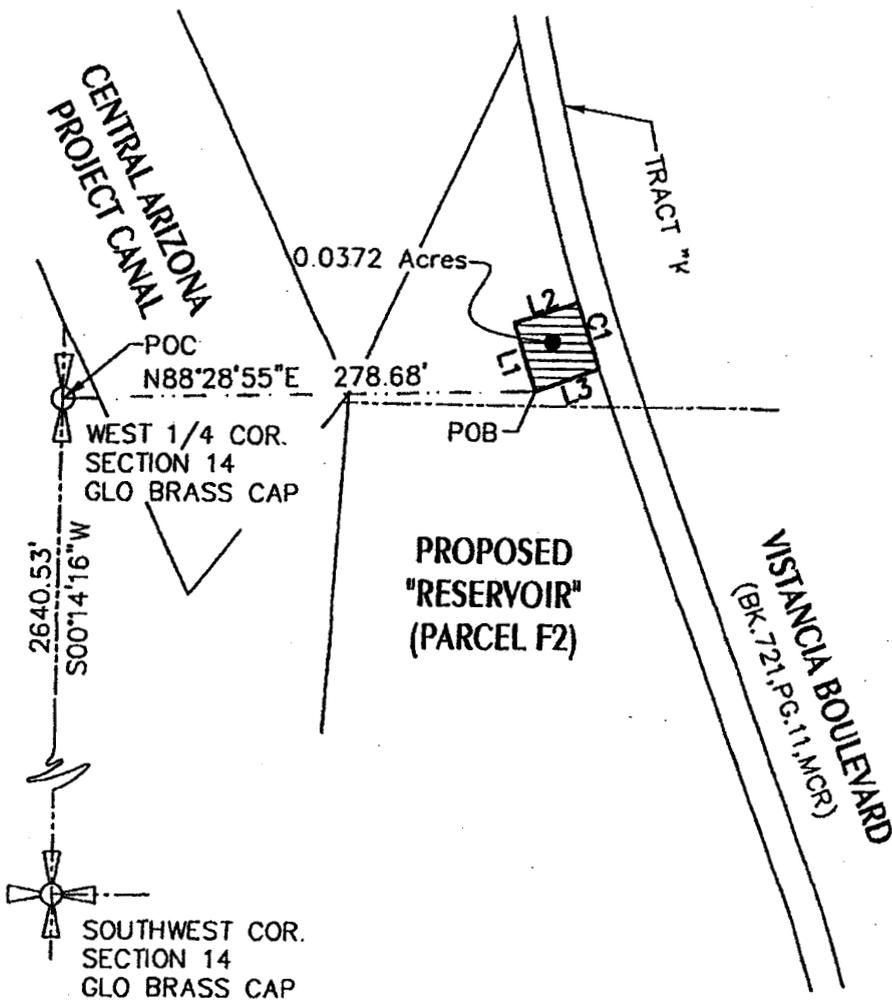
Thence S 70°41'42" W, leaving said west line of Tract "K", a distance of 40.00 feet to the POINT OF BEGINNING.

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

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

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CENTRAL ARIZONA
PROJECT CANAL



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

PROPOSED
"RESERVOIR"
(PARCEL F2)

VISTANCIA BOULEVARD
(BK. 721, PG. 11, MCR)

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

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



Vistancia

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

E

When recorded, return to:

EXHIBIT "5E"

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

DECLARATION OF PROPERTY DEVELOPMENT RESTRICTIONS

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

RECITALS:

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

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

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

DECLARATIONS:

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

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

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

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

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

6. Environmental Compliance.

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

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

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

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

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

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

with required copy to:

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

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

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

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

15. Enforcement. This Declaration may be enforced only by Declarant, and no other person shall have any right or cause of action hereunder.
16. Definitions.
 - (a) Declarant Definition. Notwithstanding any contrary provision of this Declaration, as used herein, the term "**Declarant**" shall mean Vistancia, LLC, a Delaware limited liability company, its successors, or any person or entity to whom it may expressly assign its rights and interest hereunder (which assignment shall be evidenced by an instrument recorded in the Official Records of Maricopa County, Arizona).
 - (b) Owner Definition. As used herein, the term "**Owner**" shall mean the record owner at the subject point in time of fee simple title to the Property other than Declarant, whether or not subject to any mortgage, deed of trust or other security instrument, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to the Property is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

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

DECLARANT:

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

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

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

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

By: _____
Curtis E. Smith, Chief
Operating Officer

EXHIBIT A

(Legal Description of Property)



Stanley Consultants INC.

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

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

EXHIBIT A



LEGAL DESCRIPTION

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

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

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

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

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

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

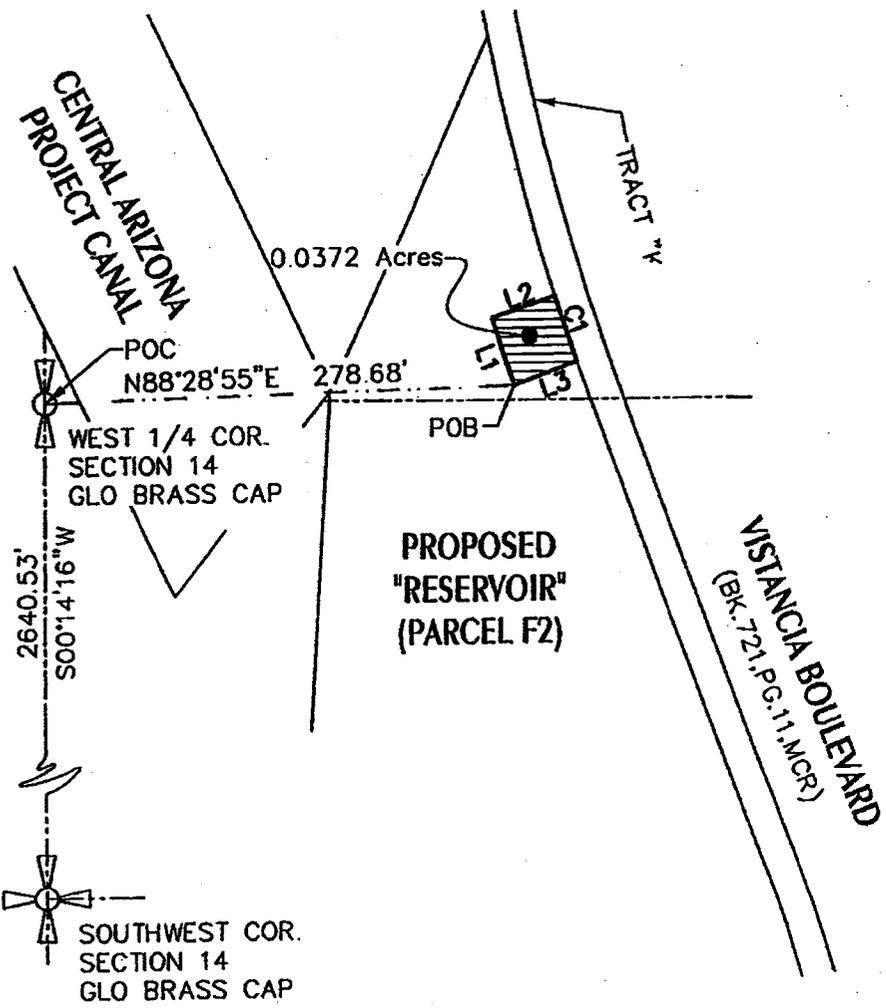
Thence S 70°41'42" W, leaving said west line of Tract "K", a distance of 40.00 feet to the POINT OF BEGINNING.

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

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

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CENTRAL ARIZONA
PROJECT CANAL



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

2640.53'
S00°14'16"W



SOUTHWEST COR.
SECTION 14
GLO BRASS CAP

PROPOSED
"RESERVOIR"
(PARCEL F2)

VISTANCIA BOULEVARD
(BK. 721, P.G. 11, MCR)

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

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



Vistancia

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

F

When Recorded, Mail to:

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

EXHIBIT "5F"

SPECIAL WARRANTY DEED

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

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

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

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

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

VISTANCIA, LLC, a Delaware limited liability company

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

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

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

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

STATE OF ARIZONA)
) Ss.
County of Maricopa)

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

Notary Public

My Commission Expires:



Stanley Consultants INC.

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

EXHIBIT A



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

LEGAL DESCRIPTION

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CENTRAL ARIZONA
PROJECT CANAL

0.0372 Acres

TRACT "Y"

POC
N88°28'55"E 278.68'

WEST 1/4 COR.
SECTION 14
GLO BRASS CAP

POB

PROPOSED
"RESERVOIR"
(PARCEL F2)

VISTANCIA BOULEVARD
(BK. 721, P. 11, MCR)

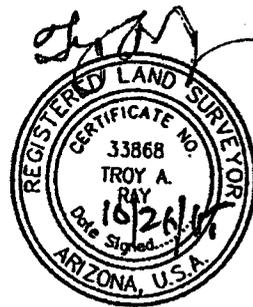
2640.53'
S00°14'16"W

SOUTHWEST COR.
SECTION 14
GLO BRASS CAP

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

LINE TABLE		
LINE	BEARING	LENGTH
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CURVE TABLE				
CURVE	DELTA	RADIUS	CH. BEARING	LENGTH
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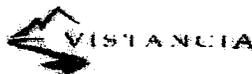
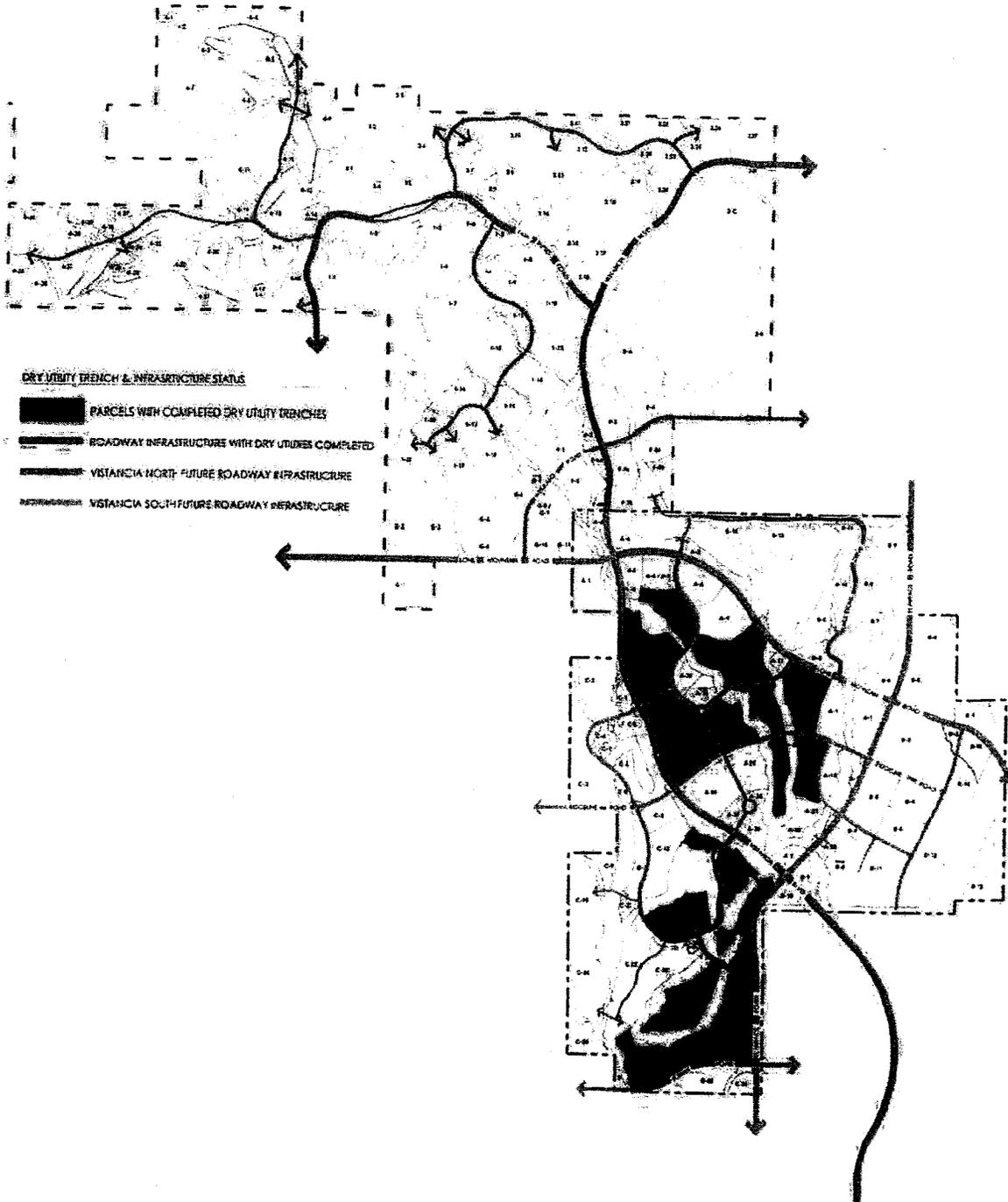
Vistancia

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

EXHIBIT B
(North Parcel)

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

6



TRENCH CLOSURE MAP



GREY PICKETT
ARCHITECTS AND ENGINEERS, INC.
10000 N. 10th Street, Suite 100
Scottsdale, AZ 85258
Tel: 480.345.1234

7

**Vistancia, LLC
&
COXCOM, INC.
RESIDENTIAL SERVICE AGREEMENT**

EXHIBIT "7"

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

RECITALS

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

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

AGREEMENT

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

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

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

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

2. Term.

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

3. License and Access Rights.

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

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

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

4. Communication Services & Technology Facilities Obligations of Cox.

- (a) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this Agreement, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit D:
 - (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona 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 Section 10, but shall not have the right to seek remedies of specific performance or damages for default.
- (i) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to

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

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

5. Technology Facilities Cooperation & Coordination by Master Developer.

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

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

6. Technology Facilities Cooperation & Coordination by Cox.

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

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

7. Insurance; Indemnification; Waiver of Subrogation.

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

8. Representations and Warranties

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

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

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

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

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

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

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

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

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

9. **Default and Remedies.**

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

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

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

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

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

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

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

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

11. Dispute Resolution Mechanisms.

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

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

- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

12. Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this Agreement and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this Agreement), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Cable Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

13. Non-Exclusive.

Nothing in this Agreement shall be construed to grant Cox any exclusive rights to provide Communication Services or Technology Facilities.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Residential Service Agreement as of the date first written above.

"Master Developer"

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

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

VISTANCIA, LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

"Cox"

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

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

By: _____
J. Steven Rizley
General Manager and VP

Lender Consent:

The undersigned hereby consents to the foregoing Residential Service Agreement, as required by the terms of the loan documents evidencing the loan to Vistancia, LLC, a Delaware limited liability company made by Residential Funding Corporation, a Delaware corporation, whose interest has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation:

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

Access Entity Consent:

The undersigned, as a party to the CMA (as such term is defined in the foregoing Residential Service Agreement), hereby consents to the termination of the CMA as provided in the foregoing Residential Service Agreement.

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

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

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

By: _____
Its: _____

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

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

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

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

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

10.3 Technology Services.

10.3.1 Wiring Specifications. Buyer shall observe the Pre-Wire Specifications set forth in Schedule 2 attached hereto and shall install the material referenced therein, in accordance therewith, in each home constructed by Buyer on the Property, all at the sole cost and expense of Buyer.

10.3.2 Third Party Beneficiaries. Each and every provider of communication or telecommunication services to the Project is intended to be a third-party beneficiary of all of the foregoing provisions of this paragraph 10.3 and, as such, shall have the right to enforce this paragraph 10.3.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement, and Schedule 2 would consist of the pre-wiring specifications set forth in Exhibit C to this Agreement.]

EXHIBIT B

Technology Facilities

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

- 1) Network:
 - a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
 - b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
 - c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:
 - Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - Open additional data channels, or
 - Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

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

SFR and MFU INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6 Bonded foil, 60% braid, non-bonded tape, flame retardant PVC jacket. Meets NEC 820 V Rating, UL Listed).

CABLE TELEVISION/INTERNET ACCESS WIRING

The Cable Television Service wiring must be run from the Service Center to each outlet desired. Since it is anticipated that demand for advanced services will be high, the corresponding distribution arrangement should be used in conjunction with dual RGA coaxial cable of tri or quad shield construction, with the recommended RG6 connector.

360-degree crimp connectors must be used consistent with the manufacturer recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

The cable run of each outlet line (RG6 and CAT 5E) connecting an individual outlet back to the Service Center must be identified and recorded. A tab must be attached to each line at the Service Center identifying the room served. The builder or the electrical contractor must provide a list of this configuration to the local cable company representative at the time of construction. This information is required to comply with new FCC regulations pertaining to ownership of in-home wiring, FCC Part 76 of Title 45 CFR (76.5(11), 76.802).

EXHIBIT D

Technology & Service Standards

1. Standards. Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards "Technology & Service Standards")
 - (a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;
 - (b) Tariffs on file with the ACC
 - (c) Bellcore (including TA-NWT-000909);
 - (d) National Cable Television Association; and
 - (e) Data Network Standards.
2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
3. Service Response. Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT E

Insurance Requirements

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

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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**Vistancia, LLC
&
COXCOM, INC.
COMMERCIAL BUILDING SERVICE AGREEMENT**

EXHIBIT "8"

This COMMERCIAL BUILDING SERVICE AGREEMENT ("Agreement") is entered into this _____ day of _____, 2005 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, and Vistancia, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached hereto.

RECITALS

- A. Whereas Master Developer is the beneficial owner (or the former beneficial owner, as to property that has been sold to third parties) of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas the parties had previously entered into an Amended and Restated Property Access Agreement dated September 25, 2003 (the "PAA"), which they now desire to terminate and replace with this Commercial Building Service Agreement.

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

AGREEMENT

1. Definitions.

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

- (a) "Agreement Date" means the date first set forth in this Agreement.
- (b) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (c) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.

- (d) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (e) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (f) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (g) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (h) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (i) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (j) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and assigns.
- (k) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (l) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (m) "Plat" means a map of dedication, map of private tract dedication, parcel map, or subdivision plat recorded by Master Developer or with the consent of Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (n) "RPUE" means that certain Roadway and Public Utility Easement dated _____, 2005 and recorded in the Office of the Maricopa County Recorder at Instrument No. _____.
- (o) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.

- (p) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (q) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (r) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (s) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (t) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (u) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (v) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (w) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

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

subject to early termination as provided in Sections 9 and 10 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer (or by a third party developer with the Master Developer's consent) of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication and Maps of Private Tract Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Access.** The parties agree that the following terms shall apply to any rights granted to Cox pursuant to the RPUE and/or any Plats recorded after recordation of the RPUE and this Agreement:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate (or cause to be established and delineated) Platted Easement Areas sufficient to allow Cox to fulfill its obligations hereunder. In the event that the provisions of this Agreement and the RPUE (or any future recorded Plat, as to areas of Vistancia not platted at the time of recordation of the RPUE) are not sufficient to allow Cox to fulfill its obligations hereunder, Master Developer shall use commercially reasonable efforts to grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary for Cox to fulfill said obligations. In the event that Master Developer does not fulfill its obligations in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's obligations hereunder and/or (ii) require Master Developer to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such rights.
 - (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that Cox's rights are non-exclusive and the Platted Easement Area may be utilized by other, even competitive, service providers.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement.

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

- (a) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit B.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (b) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (c) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia pursuant to the construction policies and tariffs of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable

Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit A. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 5(c) and 6(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 5(c) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
 - (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
 - (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (d) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 10, but shall not have the right to seek remedies of specific performance or damages for default.

- (e) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (f) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit A and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 5(c), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

6. Technology Facilities Cooperation & Coordination by Cox.

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit A for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. Without limitation of the foregoing, Cox

shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.

7. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit C.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it had fee title to the Vistancia property as of the commencement of the Initial Term, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

8. Representations and Warranties

- (a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:
 - (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Master Developer provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
 - (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
- (b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
- (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
- (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.

9. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 10 with respect to the default that has occurred:
 - (i) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 11. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 11.
- (c) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.
- (d) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 11.

- (e) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 11.
- (f) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 9.
- (g) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

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

11. Dispute Resolution Mechanisms.

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

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to

the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

12. Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party(which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this Agreement and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this Agreement), except as provided in subsections (b) or (c).

- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.
- (c) **Cox.** Cox may assign Cox's interest in this Agreement and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of Cox's license (or other legal authority of Cox) to provide Video Television Services to customers in Peoria, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

13. Non-Exclusive.

Nothing in this Agreement shall be construed to grant Cox any exclusive rights to provide Communication Services or Technology Facilities.

14. Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the

prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

- (l) **Additional Documents.** Each party hereto shall execute and deliver an such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.
- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Amended and Restated Property Access Agreement as of the date first written above.

VISTANCIA, LLC, a Delaware limited liability company

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

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

By: _____
J. Steven Rizley
General Manager and VP

By: _____
Its: _____

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

Address: 20401 North 29th Avenue

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

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

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

and required copy to
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: General Counsel

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

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

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

Lender Consent:

The undersigned hereby consents to the foregoing Commercial Building Service Agreement, as required by the terms of the loan documents evidencing the loan to Vistancia, LLC, a Delaware limited liability company made by Residential Funding Corporation, a Delaware corporation, whose interest has been assigned to the undersigned RFC Construction Funding Corp., a Delaware corporation:

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

By: _____
Its: _____

Access Entity Consent:

The undersigned, as a party to the PAA (as such term is defined in the foregoing Commercial Building Service Agreement), hereby consents to the termination of the PAA as provided in the foregoing Commercial Building Service Agreement.

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

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

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

By: _____
Its: _____

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

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

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

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

EXHIBIT A

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement as attached hereto as Exhibit B-1. If Master Developer's plans change subsequent to execution of this Agreement in such a manner that Cox's construction costs would materially increase, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities before Cox is required to construct the Technology Facilities.

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

- 1) Network: To Be Determined
- 2) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital video programming.
- 3) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 4) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

EXHIBIT B
Technology & Service Standards

1. **Standards.** Cox shall, or shall cause its affiliated companies to, develop, deliver and generally maintain the Communication Services in accordance with the following applicable industry benchmark practices and standards ("Technology & Service Standards"):

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

2. **Security.** Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

3. **Service Response.** Cox must monitor all network components in accordance with applicable standards described in paragraph 1. Cox shall provide credits for service outages in accordance with its Franchise or license requirements imposed by Peoria or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credit shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT C
Insurance Requirements

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

1. Comprehensive Liability. Commercial general liability insurance insuring against claims for bodily and personal injury, death and property damage caused by such party, its employees, agents or contractors providing in the aggregate a minimum combined single limit liability protection of Two Million Dollars (\$2,000,000) per occurrence.
2. Workers Compensation. Workers' Compensation insurance in the statutory amount as required by the laws of the State of Arizona. Such insurance shall include a waiver of subrogation endorsement in favor of the other party.
3. Automobile Liability. Automobile insurance on all vehicles owned or operated by party which are used in any way to fulfill its obligations under this Agreement. Such insurance shall provide a minimum coverage amount of \$1,000,000 combined single limit for bodily injury and property damage.
4. General Provisions. Such insurance coverage shall be maintained under one or more policies of insurance from a recognized insurance company qualified to do business within the Franchise Area and having a Best's rating of not less than A with a financial size of not less than IX. Each party shall furnish evidence of insurance satisfactory to the other prior to the date of this Agreement and thereafter at least ten (10) days prior to the expiration of any insurance coverage required to be maintained hereunder, that insurance coverage required hereunder is in force during the Term of this Agreement.

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MICHAEL K. WEAVER CLERK
B. SNEDECOR DEPUTY CLERK

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MORRILL & ARONSON, P.L.C.
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.,
a Nevada corporation,

Plaintiff,

v.

COX ARIZONA TELCOM, L.L.C. an
Arizona limited liability company;
COXCOM, INC., A DELAWARE
CORPORATION (FN), a Delaware
corporation; COX COMMUNICATIONS,
INC., a Delaware corporation; SHEA
SUNBELT PLEASANT POINT, L.L.C.,
a/k/a VISTANCIA L.L.C., a Delaware
limited liability company; VISTANCIA
COMMUNICATIONS, L.L.C.; an Arizona
limited liability company; CITY OF
PEORIA, an Arizona municipal corporation;
DEBRA STARK, in her official capacity as
the Director of the Community Development
Department of the City of Peoria; JOHN
DOES I-X; JANE DOES I-X; ABC
CORPORATIONS I-X; and XYZ
PARTNERSHIPS or OTHER ENTITIES I-
X;

Defendants.

Cause No. CV2005-010727

**PLAINTIFF'S NOTICE OF
DISMISSAL OF CERTAIN
DEFENDANTS WITH
PREJUDICE**

Plaintiff, by and through undersigned counsel, pursuant to Rule 41(a)(1)(A),
Ariz.R.Civ.P., hereby submits this Notice of Dismissal with prejudice of only the following

1 Defendants, Cox Arizona Telcom, L.L.C., CoxCom, Inc., Cox Communications, Inc., Shea
2 Sunbelt Pleasant Point, L.L.C., a/k/a Vistancia L.L.C., and Vistancia Communications, L.L.C.,
3 in the above-captioned lawsuit. No adverse party has appeared or otherwise filed or served an
4 Answer or Motion in this case. Therefore, dismissal with prejudice upon this Notice is
5 appropriate under Rule 41(a).

6 This Notice of Dismissal of Certain Defendants With Prejudice together with a separate
7 Notice of Dismissal of Certain Defendants Without Prejudice (filed on this same date) dismisses
8 this action as to all Defendants.

9 RESPECTFULLY SUBMITTED this 8th day of November 2005.

10 MORRILL & ARONSON, P.L.C.

11 By William D. Cleaveland
12 Martin A. Aronson
13 William D. Cleaveland
14 One East Camelback Road, Suite 340
Phoenix, AZ 85012-1648
Attorneys for Plaintiff

15 ORIGINAL of the foregoing
16 filed with the Clerk of the Court and
17 COPY hand-delivered this 8th
day of November, 2005 to:

18 The Honorable Pendleton Gaines
19 Maricopa County Superior Court
201 West Jefferson Street
Phoenix, Arizona 85003

21 Synda Kogutkiewicz

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MORRILL & ARONSON, P.L.C.
ATTORNEYS AT LAW
ONE EAST CAMELBACK
SUITE 340
PHOENIX, ARIZONA 85012
TELEPHONE (602) 263-8993

COPY

NOV - 8 2005



MICHAEL K. JAMES, CLERK
H. STEPHEN
DEPUTY CLERK

Martin A. Aronson (009005)
William D. Cleaveland (015000)
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

ACCIPITER COMMUNICATIONS, INC.,
a Nevada corporation,

Plaintiff,

v.

COX ARIZONA TELCOM, L.L.C. an
Arizona limited liability company;
COXCOM, INC., A DELAWARE
CORPORATION (FN), a Delaware
corporation; COX COMMUNICATIONS,
INC., a Delaware corporation; SHEA
SUNBELT PLEASANT POINT, L.L.C.,
a/k/a VISTANCIA L.L.C., a Delaware
limited liability company; VISTANCIA
COMMUNICATIONS, L.L.C.; an Arizona
limited liability company; CITY OF
PEORIA, an Arizona municipal corporation;
DEBRA STARK, in her official capacity as
the Director of the Community Development
Department of the City of Peoria; JOHN
DOES I-X; JANE DOES I-X; ABC
CORPORATIONS I-X; and XYZ
PARTNERSHIPS or OTHER ENTITIES I-
X;

Defendants.

Cause No. CV2005-010727

**PLAINTIFF'S NOTICE OF
DISMISSAL OF CERTAIN
DEFENDANTS WITHOUT
PREJUDICE**

Plaintiff, by and through undersigned counsel, pursuant to Rule 41(a)(1)(A),
Ariz.R.Civ.P., hereby submits this Notice of Dismissal without prejudice of only the following

1 Defendants, the City of Peoria and Debra Stark, in her official capacity as the Director of the
2 Community Development Department of the City of Peoria, in the above-captioned lawsuit. No
3 adverse party has appeared or otherwise filed or served an Answer or Motion in this case.
4 Therefore, dismissal without prejudice upon this Notice is appropriate under Rule 41(a).

5 RESPECTFULLY SUBMITTED this 8th day of NOVEMBER, 2005.

6 MORRILL & ARONSON, P.L.C.

7
8 By William D. Cleaveland
9 Martin A. Aronson
10 William D. Cleaveland
11 One East Camelback Road, Suite 340
12 Phoenix, AZ 85012-1648
13 Attorneys for Plaintiff

11 ORIGINAL of the foregoing
12 filed with the Clerk of the Court and
13 COPY hand-delivered this 8th
14 day of November, 2005 to:

14 The Honorable Pendleton Gaines
15 Maricopa County Superior Court
16 201 West Jefferson Street
17 Phoenix, Arizona 85003

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Synda Kogutkiewicz

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BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION DOCUMENT NO. 101

COMMISSIONERS

JEFF HATCH-MILLER

Chairman

WILLIAM A. MUNDELL

Commissioner

MARC SPITZER

Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

IN THE MATTER OF THE FORMAL) DOCKET NO. T-03471A-05-0064
COMPLAINT OF ACCIPITER)
COMMUNICATIONS, INC. AGAINST)
VISTANCIA COMMUNICATIONS,)
L.L.C., SHEA SUNBELT PLEASANT)
POINT, L.L.C., AND COX ARIZONA)
TELCOM, LLC)

NOTICE OF WITHDRAWAL WITH PREJUDICE

Complainant Accipiter Communications, Inc., by and through undersigned counsel, hereby submits this Notice of Withdrawal with Prejudice from the above-captioned proceeding. Per a Settlement Agreement between the Parties (not including

ACC Staff), Accipiter Communications, Inc., has fully released with prejudice all its claims set forth against the named Respondents in this docket.

RESPECTFULLY SUBMITTED this 8th day of NOVEMBER, 2005.

MORRILL & ARONSON, P.L.C.

By William D. Cleaveland
Martin A. Aronson
William D. Cleaveland
One East Camelback Road, Suite 340
Phoenix, AZ 85012-1648
Attorneys for Accipiter Communications, Inc.
Telephone: (602) 263-8993
Fax: (602) 285-9544

ORIGINAL and 13 copies of the foregoing filed this 8th day of November, 2005 with:

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

COPY of the foregoing hand-delivered this 8th day of November, 2005 to:

Dwight D. Nodes, Esq.
Assistant Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher C. Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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

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

COPY of the foregoing mailed
this 8th day of November, 2005 to:

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

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

