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T-03471A-05-0064

PART 2 OF 2

BAR CODE # 0000049726

To review Part 1 please see:

BAR CODE #0000046239

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

) DOCKET NO. T-03471A-05-0064
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DIRECT TESTIMONY
OF
TISHA CHRISTLE
ON BEHALF OF
COX ARIZONA TELCOM, L.L.C.

April 5, 2006

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

2 A. My name is Tisha Christle. I have been employed by Coxcom, Inc., d/b/a Cox
3 Communications Phoenix ("Cox") since 1994. From about 2002 until the present, my title
4 has been Senior Account Executive, New Business Development. My business address is
5 1550 W. Deer Valley Road, Phoenix, Arizona. Some of the documents produced with my
6 testimony reflect my maiden name of Tisha Arthurs.

7
8 **Q. What is the purpose of your testimony?**

9 A. This Commission has raised some questions regarding certain co-marketing, property
10 access, and licensing agreements (the "Agreements")¹ entered into by Cox, Shea Sunbelt
11 Pleasant Point, LLC ("Shea Sunbelt"), and/or Vistancia Communications, L.L.C.
12 ("Vistancia Communications") relating to the Vistancia master planned community
13 ("Vistancia") located in the City of Peoria. (Shea Sunbelt and Vistancia Communications
14 will collectively be referred to as "Shea".) My testimony provides information regarding
15 the negotiations between Cox and Shea, and Cox's understanding and intent in entering
16 into the Agreements.

17 **I. SUMMARY OF TESTIMONY**

18 **Q. Would you please summarize your testimony?**

19 A. In Spring 2002, Shea contacted Cox to discuss the provision of video, voice, and data
20 services to the newly developing community of Vistancia. I was one of the Cox personnel
21 tasked with assisting the negotiations between Cox and Shea.
22
23

24 ¹ Specifically, the Agreements are: (1) Co-Marketing Agreement dated April 8, 2003 (the "Co-Marketing
25 Agreement"); (2) Property Access Agreement dated April 8, 2003 (the "Property Access Agreement"); (3) Amended
26 and Restated Co-Marketing Agreement dated September 25, 2003 (the "Restated Co-Marketing Agreement"); (4)
27 Amended and Restated Property Access Agreement dated September 25, 2003 (the "Restated Property Access
Agreement"); (5) Non-Exclusive License Agreement dated December 31, 2003, relating to the Restated Property
Access Agreement ("NELA-1"); (6) Non-Exclusive License Agreement dated December 31, 2003 relating to the
Restated Co-Marketing Agreement ("NELA-2"). Copies of these Agreements are attached hereto as **Attachments
TC-1 through TC-6.**

1 The capital costs for Cox to provide the desired services to Vistancia was extremely high,
2 because Vistancia was remote from existing Cox hubs and because the provision of
3 telephony would require construction of redundant lines to meet regulatory requirements
4 relating to 911 emergency calls. After a lot of internal financial analysis by Cox and many
5 discussions within Cox about the financial uncertainties of going into Vistancia, we
6 informed Shea that Cox would provide the desired services if Shea would contribute \$2
7 million toward the capital costs and would enter into what is commonly known as a
8 preferred provider agreement whereby Shea would exclusively market Cox's services
9 within Vistancia and, in exchange, would receive a revenue share based on the penetration
10 rates achieved.² In the Fall of 2002, other Cox employees and I drafted residential and
11 commercial agreements to document this understanding. As is common with preferred
12 provider agreements, the drafts provided for non-exclusive access by Cox to Vistancia,
13 meaning that other service providers were free to market and offer their services in
14 Vistancia. It is my understanding that, other than the \$ 2 million capital contribution, this
15 was a very typical deal for Cox.

16
17 After the drafts had been exchanged with Shea and were nearly complete in late 2002,
18 Shea informed Cox that it wanted to revise the draft agreements. Shea explained that its
19 access entity would seek a multi-use easement ("MUE") from the City of Peoria to have
20 exclusive rights to contract with providers for communications services in Vistancia. Shea
21 also explained that multi-use easements have been granted elsewhere and have been held
22 to be legal. Shea assured me that these new drafts of the agreements and the use of an
23 MUE would not change the substance or the financial terms of the preferred provider
24 arrangement that Cox had already negotiated with Shea. Shea then provided new drafts of
25 the residential and commercial agreements (which became the Co-Marketing Agreement
26

27 ² In contrast to the \$2 million capital contribution that Cox requested from Shea, I learned later that Qwest –
who Shea had also approached – sought a capital contribution of as much as \$15 million to build the
telecommunications infrastructure at Vistancia.

1 and the Property Access Agreement), and subsequently drafted the two licensing
2 agreements and the two restated agreements. (See **Attachments TC-3 through TC-6.**)
3 All of the Agreements expressly provide that Cox has only a non-exclusive right to provide
4 communications services within Vistancia.

5
6 This Commission has asked about some of the notes that I took during negotiations with
7 Shea regarding the effect on competition. (See, e.g., **Attachment TC-12 and 27.**) The
8 notes at issue reflect statements made by Shea representatives that I simply recorded, and
9 do not in any way reflect statements by Cox representatives. It was Shea that decided to
10 structure the arrangement by using a multi-use easement. It was also Shea that offered to
11 pay Cox \$3 million in capital contribution and requested a \$1 million payment. This was
12 explained as a way to keep the financial arrangement with Cox the same as what had
13 already been negotiated, but at the same time reflect the MUE fee that Shea would be
14 entitled to charge service providers. Cox agreed based on Shea's assurances that the multi-
15 use easement would be subject to the approval of the City of Peoria and that the
16 arrangement had been found to be legal when used in other parts of the country, and based
17 on Cox's understanding that it had only a non-exclusive right to access the property. All
18 throughout the time that we were negotiating the Agreements, I had no knowledge or
19 understanding that there was anything improper about what Shea had structured. Even
20 today, I do not really understand how or why the Agreements could be found to prevent or
21 limit Shea's right to license other entities to provide services in Vistancia in competition
22 with Cox, because the Agreements are expressly non-exclusive as to access to Vistancia. It
23 is my belief that Cox did not intend to violate the anti-trust laws when it entered into the
24 Agreements.

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II. TESTIMONY REGARDING NEGOTIATIONS WITH SHEA

Q. When and how did you first become involved with Vistancia?

A. In about late August or early September of 2002, I was asked by my boss at the time, Paul Drake, the Director of New Business Development, to assist him with contract negotiations for a newly developing master planned community located in the City of Peoria that, at the time, was called Pleasant Point. (Shea later renamed the community Vistancia, which is the name that I will use throughout this testimony.) It was my understanding that a representative of Shea had previously contacted Cox to inquire whether Cox would be willing to provide video, voice, and data services to Vistancia, and the matter was assigned to New Business Development, the department in which I work.

Q. What was your initial understanding about whether Cox was interested in providing services to Vistancia?

A. Shortly after I joined the project, I learned that Vistancia was very remote from Cox's existing hubs and that Cox would incur significant capital expenditures to extend services out to Vistancia. I also learned that, if it were to provide telephony, Cox would be required to construct a redundant line to meet regulations relating to 911 emergency calls, which would further increase the capital expenditures required by Cox. In fact, it was my understanding that Qwest had already informed Shea that it would not be interested in incurring the high costs necessary to service the area if it faced competition in Vistancia, and I learned later that Qwest wanted a very substantial capital contribution (as much as \$15 million) if it was to build the telecommunications infrastructure at Vistancia.

Because of the enormous capital expenditures that would be required for Cox to serve Vistancia, by the time I joined the project Cox's Finance Department had determined that Cox would not be willing to extend services out to Vistancia unless Shea would agree to

1 make a capital contribution in the amount of at least \$2 million. The exact amount of the
2 required capital contribution was subject to negotiation. For example, if Shea would agree
3 to bulk the communications services and provide exclusive, high-profile marketing of
4 Cox's services within the Vistancia community, then Cox would be able to accept a
5 smaller capital contribution. These negotiations took some time, and I knew that the
6 financial risk to Cox of extending service to Vistancia without a sufficient capital
7 contribution from Shea was substantial.

8
9 **Q. What were your first communications with Shea regarding Vistancia?**

10 **A.** As I recall, my first communication with Shea representatives regarding Vistancia was at a
11 meeting on September 9, 2002, which is reflected in my hand-written notes (**Attachment**
12 **TC-7**). I do not recall many details about that meeting other than what is reflected in my
13 notes. However, I do recall that Shea was requesting both residential and commercial
14 services and was not particularly interested in a bulked services arrangement. The Shea
15 representatives indicated general agreement with making a capital contribution and
16 providing exclusive, high-profile marketing of Cox's services within Vistancia, but Shea
17 wanted a return in the form of marketing compensation. The Shea representatives
18 requested a preferred provider marketing agreement like Cox had previously done with
19 Shea for a community known as Surprise Farms. Typically, under a preferred provider
20 marketing agreement, the developer agrees to market Cox's services to prospective home
21 and business owners, and not to market services of other communications providers. In
22 return for its exclusive marketing efforts, the developer receives a commitment to build the
23 entire telecommunications infrastructure and receives revenue sharing, the amount of
24 which is determined by the market penetration.

25
26 Shea wanted an agreement equivalent to the Surprise Farms contract because, in addition
27 to revenue sharing, the Surprise Farms contract also provided discount pricing without

1 bulking of services. However, the billing arrangements for the Surprise Farms deal was
2 administratively difficult for Cox, and Cox was not interested in duplicating the customer
3 pricing component of the Surprise Farms deal. Aside from the discounted pricing
4 component, I recall that Cox and Shea generally agreed that the Surprise Farms contract
5 provided a good framework for structuring the Vistancia contract.
6

7 **Q. What did Cox do after the September 9 meeting with Shea?**

8 A. We continued our internal discussions about Shea's request for services to Vistancia. On
9 September 16, we had an internal meeting to discuss the matter, as reflected in my notes of
10 that meeting (**Attachment TC-8**). Again, I do not recall many specifics about the meeting.
11 I do recall, based on my notes, that we discussed the need to prepare separate agreements
12 relating to residential and commercial services. We discussed using the preferred provider
13 contract from the Surprise Farms deal as the starting point for drafting the residential
14 agreement. We may have also discussed that the amount of the capital contribution
15 required from Shea would depend upon whether Shea would agree to an exclusive
16 marketing arrangement, because without some assurance that Shea would market and
17 promote Cox's services at Vistancia, the financial risks to Cox of extending service to
18 Vistancia would increase significantly. We also discussed that we would have a follow-up
19 meeting with Shea.
20

21 On September 18, 2002, we had another meeting with the Shea representatives, as reflected
22 in my notes (**Attachment TC-9**). I do not recall the details of this meeting, but, based on
23 my notes, believe that it was just another informational meeting. Again, we discussed
24 using a preferred provider contract for exclusive marketing services and revenue sharing.
25 I then begin drafting a proposed residential co-marketing agreement by marking up the
26 Surprise Farms contract (**Attachment TC-10**). Mary Kelley, a Cox employee at the time,
27 began drafting a proposed property access agreement for the commercial business

1 (Attachment TC-11). For both the residential and commercial contracts, it was our intent
2 to provide only for non-exclusive access by Cox, and to allow Shea to contract with other
3 communications services providers if it chose to do so. Only the marketing aspect was
4 exclusive, to insure, as with all preferred provider agreements, that Shea would promote
5 only Cox's services within Vistancia in return for Cox's assurance that it would serve the
6 entire Vistancia development.

7
8 **Q. What happened next?**

9 A. We had another meeting with Shea on October 8, 2002, and my notes of that meeting are
10 reflected in document C01773 (Attachment TC-12). I do not recall the details of that
11 meeting. I do recall that, at the meeting, we presented a written proposal to Shea outlining
12 several options. The written proposal is reflected in document number C00607-613
13 (Attachment TC-13), which I believe also contains the handwritten notes of former Cox
14 employee Dan Sjostrom. Dan Sjostrom was the member of Cox's Finance Department
15 who had been tasked with assisting in the Vistancia negotiations.

16
17 As reflected in the written proposal, Cox offered four different options to Shea. Three of
18 the options would require Shea to enter into an exclusive marketing agreement and a
19 bulked services agreement, and the amount of the required capital contribution varied
20 depending on the particular services that Shea requested. The Shea representatives stated
21 that Shea was not interested in a bulked services arrangement. The remaining option did
22 not require a bulked services agreement, but did require that Shea make a \$2 million
23 capital contribution and enter into an exclusive marketing agreement. The proposal also
24 set forth the revenue sharing formula that would allow Shea to earn back some of its
25 capital contribution based on market penetration.
26
27

1 I recall generally that Shea was in agreement with the revenue sharing formula and the
2 option that did not require bulking. I also recall that, during the meeting, Rick Andrene,
3 one of the Shea representatives said that Shea knew of a way legally to “keep out
4 competition” and wanted to know “what is it worth” to Cox. (**Attachment TC-12**) I
5 wrote down these statements made by the Shea representatives. These were not statements
6 made by Cox. I do not recall specifically how Cox responded to Shea’s questions, but
7 recall generally that we indicated that we were open to learning about different ways of
8 legally providing services. As reflected in Dan Sjostrom’s notes, the Shea representatives
9 stated very clearly that what they were considering was held to be legal in other parts of
10 the country where it had been used. (**See Attachment TC-13.**)

11
12 To the best of my recollection, the Shea representatives did not further explain the use of a
13 multi-use easement (“MUE”) at the October 8 meeting. At no time did I ever participate in
14 any discussions with Shea regarding Cox having exclusive access to Vistancia. To the best
15 of my knowledge and belief, no one at Cox ever discussed having exclusive access to
16 Vistancia. To the best of my knowledge and belief, all of Cox’s contracts provide for non-
17 exclusive rights to access, as is typical under a preferred provider agreement.

18
19 **Q. What happened next?**

20 **A.** Working with Cox’s in-house counsel, I continued to draft the co-marketing agreement
21 using the structure of Cox’s preferred provider contracts, as reflected in documents
22 C02472-98, and circulated a draft to the Shea representatives, as reflected in document
23 C01434-1461 (**Attachment TC-14 and TC-15 respectively**). Cox and Shea exchanged
24 red-line drafts of the residential agreement (**Attachments TC-16, TC-17 and TC-18,**
25 **respectively**). Mary Kelley, along with Cox’s in-house counsel, continued to work on the
26 commercial agreement, which did not provide for revenue sharing, and exchanged drafts
27

1 with Shea. It is my understanding that, other than the provision for a \$ 2 million capital
2 contribution, the contracts structured a deal that was typical for Cox.

3
4 On November 20, we had a meeting with Shea to deliver what we thought were the final
5 documents for review, as reflected in documents C01496 and C01526 (**Attachment TC-**
6 **19**). Shea indicated that revenue sharing was critical, even on the commercial piece. Cox
7 subsequently added a revenue sharing component to the commercial agreement, as
8 reflected in documents C01530-1553, C01579-1603, and C01604-1633 (**Attachments TC-**
9 **20, TC-21, and TC-22**).

10
11 **Q. Were the documents that Cox initially drafted eventually signed by Shea?**

12 **A.** No. By December of 2002, we thought we had final agreements with Shea. However,
13 shortly before Christmas, Mark Hammons and Curt Smith of Shea informed us that they
14 wanted to redraft the agreements. The Shea representatives explained that developers in
15 another state have used what they called an "MUE" to govern access to their development
16 and that the MUE has been upheld as legal.

17
18 The Shea representatives provided us copies of documents that lawyers in other states use
19 to establish the MUE. These documents are the Common Services Easements and
20 Restrictions and the Non-Exclusive License Agreement, as reflected in documents
21 C01655-1680, C01707 (**Attachments TC-23 and 24**). The Shea representatives explained
22 that Shea wanted to establish Vistancia Communications as the access entity that would
23 acquire the right from the City of Peoria to determine which providers could access
24 easements in Vistancia. Shea needed time to obtain these MUE rights from the City of
25 Peoria.

1 The Shea representatives revised the commercial and residential agreements, as reflected in
2 documents C01681-1706, C01786-1813 (**Attachments TC-25 and TC-26**). It was my
3 understanding that the new documents were simply to provide for the use of an MUE
4 should the City of Peoria grant one to Shea, and I was assured that these new documents
5 would not change the substance or the financial terms of the preferred provider
6 arrangement that Cox had already negotiated with Shea.

7
8 **Q. What did you do next?**

9 A. I forwarded the new draft agreements to Cox's in-house counsel in Atlanta. We also
10 continued to move forward with technical issues, like scheduling for construction, to be
11 sure that we would be able to meet deadlines when the deal would finally be documented.
12 I understood that we had an agreement in principal with Shea and wanted to be sure that
13 Cox was moving forward to meet its delivery obligations under the agreement.

14
15 **Q. When did you first learn about a payment by Cox to Shea?**

16 A. We had another meeting with the Shea representatives on February 13, 2003, as reflected
17 in my notes (**Attachment TC-27**). Again, I do not recall the details of that meeting, but do
18 recall generally that the Shea representatives stated that, as part of the MUE arrangement,
19 they would pay Cox \$5 million and Cox would pay Shea's access entity \$3 million "to
20 keep out the competition." These words came directly from the Shea representatives, but I
21 cannot recall specifically who made the statements. I do not recall what Cox said in
22 response, but believe that, generally, we indicated that we would need to discuss this
23 proposal internally. However, I do recall being uncertain about what Shea meant. At an
24 internal Cox meeting a few days later, I recorded this confusion by noting that Shea
25 seemed to be giving Cox an interest free loan, and I did not understand why Shea was
26 doing this (**Attachment TC-27**).

1 Sometime later, Shea provided us with new draft agreements that would require Shea to
2 pay Cox \$3 million in capital contribution and require Cox to pay Shea \$1 million for
3 exclusively marketing Cox's services at Vistancia. These drafts are reflected in document
4 C03013-3105 (**Attachment TC-28**). I forwarded Shea's drafts to Cox's in-house counsel,
5 and our in-house counsel worked with Shea's counsel to finalize the contracts.
6

7 **Q. What, if anything, do you recall about language regarding "most favored nation"?**

8 A. After reviewing the documents, I recall that Shea's new drafts added language regarding
9 "most favored nation" rights. I did not understand this new provision. I believe that I
10 asked Shea's representatives to help us understand the new provision. I recall that we
11 received a memorandum from Shea's in-house counsel explaining the new provision
12 (**Attachment TC-29**). I do not recall discussions with Shea representatives about this
13 "most favored nation" language, but recall that the memorandum from Shea's in-house
14 counsel stated that the provision assured a competitive playing field. Again, I understood
15 from Shea representatives that the MUE arrangement was legal, that an MUE would give
16 Shea the legal right to charge for access to its property, but I knew that the draft
17 agreements specifically granted Cox only a non-exclusive access right.³
18

19 **Q. What did you understand the executed versions of the original co-marketing and**
20 **property access agreements provided Cox with respect to access rights to Vistancia?**

21 A. Effective April of 2003, Cox and Shea finalized the terms of the agreements, as reflected in
22 the Co-Marketing Agreement (**Attachment TC-1**) and the Property Access Agreement
23

24
25 ³ **Attachment TC-30** contains Paul Drake's hand-written notes of meetings to discuss Vistancia. The notes
26 contained on the document numbered C01527 reflect a meeting that apparently occurred on October 22, 2002, and
27 contain the words "most favored nation." As I recall, Curt Smith of Shea requested a "most favored nation"
provision, which meant that Shea would be entitled to receive the best services and pricing that Cox offered so that
Vistancia would be competitive with other communities. I do not recall any further discussion about this. I do not see
the language "most favored nation" in what Cox prepared as the final drafts of the residential and commercial
agreements that were being circulated in the Fall of 2002 and think that Cox must not have agreed to Shea's request.

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(Attachment TC-2). These documents conferred only non-exclusive access rights to Cox.

Q. What is your understanding as to why Cox entered into the restated agreements in the fall of 2003?

A. I understood from the Shea representatives that the restated agreements were drafted to account for the fact that the City of Peoria granted the MUE to Shea's access entity in the summer of 2003. When Cox and Shea entered into the original contracts effective April 2003, Shea was still awaiting receipt of the MUE from the City of Peoria. It was my understanding that the City of Peoria granted the MUE sometime in the summer of 2003, which I understood designated Vistancia Communications as the access entity that had the legal right to control access to easements in Vistancia.

Shea provided drafts of the new restated agreements in the Fall of 2003, as well as drafts of the non-exclusive license agreements (Attachment TC-31). I forwarded these drafts to Cox's in-house counsel for review. It was my understanding from the Shea representatives that the license agreements provided record notice of Cox's right to access Vistancia.

I also understood that Shea needed the marketing fees made by Cox to be reflected as licensing fees in order to effectuate the full intent of the MUE granted by the City of Peoria. Although I was not entirely clear how the MUE works, I understood from Shea representatives that the MUE allowed Shea to license providers to access Vistancia for a fee. Cox had only non-exclusive access rights, and Shea could sell access rights to as many of Cox's competitors as Shea wanted.

1 **Q. What, if anything, did you understand about Accipiter during the time Cox was**
2 **negotiating the Vistancia deal with Shea?**

3 **A.** Sometime during the latter half of 2003, I learned that Vistancia had two different
4 area codes and that both Qwest and Accipiter had service rights in different parts of
5 Vistancia. Shea was concerned that members of the Vistancia community would
6 have to use two different area codes and asked Cox to help with this. I was not
7 directly involved in this matter but, instead, left the matter to Cox's regulatory
8 affairs department.

9
10 **Q. What is your understanding as to why Cox agreed to the contractual arrangement**
11 **proposed by Shea?**

12 **A.** Vistancia was a newly developing community that would need voice, video, and data
13 services but was very far from Cox's existing facilities. We understood that Qwest was
14 not willing to provide telephone services that far out. Cox, on the other hand, was willing
15 to provide the requested services to Vistancia customers. However, Cox needed at least a
16 \$2 million capital contribution from Shea given the enormous construction costs. Because
17 competition would occur within the community, Cox also wanted exclusive marketing
18 support from Shea to bolster sales of Cox's products, which is common with preferred
19 provider agreements.

20
21 I understood from Shea representatives that Shea wanted the ability to recoup some of its
22 capital contribution and that the MUE was a legal way of doing this. I did not have any
23 particular understanding about how the MUE arrangement worked, except I understood
24 from Shea that Shea could sell access rights as a means of controlling access and recouping
25 some of the capital contribution. Shea provided the drafts of the documents that it
26 explained were legal and appropriate to document the MUE arrangement. Because the
27 MUE issue arose after Cox and Shea had already negotiated and essentially fully

1 documented their preferred provider arrangement, it was my understanding (and I was
2 assured by Shea) that the MUE issue would not change the substance or the financial terms
3 of the Cox/Shea deal.
4

5 **Q. Did Cox intend to engage in anti-competitive conduct when it entered into the MUE**
6 **agreements with Shea?**

7 A. No. It is my understanding and belief that Cox did not intend to violate anti-trust laws by
8 entering into the MUE Agreements with Shea. The original negotiated deal between Cox
9 and Shea was a rather standard preferred provider arrangement with revenue sharing that,
10 other than with respect to the \$2 million capital contribution, was typical of the deals that
11 Cox had entered into with other developers. That arrangement was fully negotiated and
12 almost fully documented when Shea raised the MUE issue. As far as I was concerned, the
13 MUE issue was something between Shea and the City of Peoria that gave Shea certain
14 added property rights, but that Shea could not use that to change the deal that it had already
15 negotiated with Cox. We always understood from Shea that the MUE arrangement
16 proposed and eventually documented by Shea had been tested elsewhere and was found to
17 be legal. It was also my understanding that the City of Peoria would have to grant, and did
18 eventually grant, the MUE in order to effectuate the structure proposed and documented by
19 Shea. Cox never requested exclusive access to Vistancia, and Shea never contracted or
20 otherwise promised that Cox would have exclusive access to Vistancia. It was my
21 understanding that Cox had no ability to exclude competitors from Vistancia and that Cox
22 had no agreement with Shea to do so. Indeed, if Cox had thought that its competitors
23 would be excluded from Vistancia, there would have been no need for Cox to have a
24 preferred provider arrangement.
25
26
27

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

1 **Q. Does this end your testimony?**

2 **A. Yes, it does.**

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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

DIRECT TESTIMONY

OF

TISHA CHRISTLE

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

ATTACHMENTS

TC-1 Through TC-31

1 of 2

April 5, 2006

TC-1

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

This CO-MARKETING AGREEMENT ("CMA") is entered into this 12 day of April 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, L.L.C., a Delaware limited liability company, (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a nonrefundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer intends to subject all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this CMA is being executed by the parties prior to recordation of the CSER, this CMA shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.

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- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- G. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- I. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

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

AGREEMENT

- I. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
 - (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
 - (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.

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- (f) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (g) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (h) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (i) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital E of this CMA), as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as "Cox High Speed Internet".
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea Sumbell Pleasant Point, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (t) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (u) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.

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- (w) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (x) "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.
- (y) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (z) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (aa) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (bb) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (dd) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity of

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enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, governmental expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

- (cc) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (gg) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.
- (hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. **Terms.**

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. **License and Access Rights.**

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital E). The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

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- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (c) Pre-Wire Specifications. Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

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- (d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).
- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

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

- (a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office, by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003.
- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. The compensation as set

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forth in Exhibit G (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

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

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Technology Facilities or delivers the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(c) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit B; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and

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conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
- (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;
 - (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;
 - (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to

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model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (b) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) Similar Agreements and Co-Branding. Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).

(iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation which takes individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

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

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.

(d) Reporting by Neighborhood Builders. During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

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- (c) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master

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Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

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

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(ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(c) Construction Manager. Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) Marketing of Apartment Parcels. Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) Required Insurance. During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) Damage or Destruction by Master Developer. In the event that Master Developer its agents shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) Damage or Destruction by Cox. In the event that Cox its agents shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) No Liability for Computer Damage. Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) Waiver of Subrogation. Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

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(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

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of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.

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

(iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.

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

(vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

(a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

(i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to

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VistaGIA or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

- (u) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.
- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

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- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.
- (c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
 - (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on

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behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from

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and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

- (a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the non-prevailing party.
- (d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

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- (c) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint ventures or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "Subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is

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required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents, which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

"Master Developer"

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

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

"Cox"

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

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

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

By: J.W. Maloney
ASST. CEO

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

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

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

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

By: Howard T. Brennan
VP of Business Operations

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"Access Entity"

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

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2341

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

By: Shea Sunbelt Pleasant Point, L.L.C., a Delaware
limited liability company, its Manager

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

By: 
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

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated April 8th 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property;
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party.

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

EXHIBIT F

Insurance Requirements

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

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

EXHIBIT C

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or leased, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

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

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this 8 day of April, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, Shea Sumbell Pleasant Point, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and covenants referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- D. Whereas the Master Developer intends to subject all or a portion of Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License (as hereinafter defined) shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this Agreement is being executed by the parties prior to recordation of the CSER, this Agreement shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.
- E. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.

G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

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

AGREEMENT

1. Definitions.

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

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital D of this Agreement), as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

- (j) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as Cox High Speed Internet.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.
- (m) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- (n) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (o) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement (the form of which shall be subject to review and approval by Cox as provided in Recital D), pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- (p) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (q) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (r) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Pecos or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (s) "Vistancia" means the approximately 7,100 acre master planned community developed in Pecos, Arizona, described in Recital A.
- (t) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment,

power interfaces, service drop wiring and service laterals and other structures and improvements, but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.

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

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

4.

Cox Initial / Developer Initial



- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital D). The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
- (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.

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

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

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the

Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.

- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (f) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;

- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation which, in the aggregate, allows a lower payment than is provided for the Percentage Fee under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage Payment under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required, provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction

of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 8) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC with respect to that Qualifying Building.

Penetration Percentage

0% - 74%
75% - 85%
86% - 95 %
96% - 100%

Applicable Percentage
Fee

0% of MRC
3% of MRC
4% of MRC
5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Master Developer shall be paid the Applicable Percentage Fee, if any, corresponding to the decreased Penetration Percentage.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
- (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.

10. **Insurance; Indemnification; Waiver of Subrogation.**

- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.
- (c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computers or any other

technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).
- (f) **Ownership.** Master Developer represents and warrants that it has fee title to the Vistancia property, subject to all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record. Master Developer shall indemnify Cox for any claims, losses, suits, damages (including court costs and attorneys fees) arising out of a breach of this warranty.

11. Representations and Warranties

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

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

Cox Initial *B* / Developer Initial *Pret*

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access

Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

12. Default and Remedies.

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

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

- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 11 below).

13. **Termination and Partial Termination; Rights of Parties after Termination.**

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in

Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancinet" and

Master Developer shall remove all of its equipment used in the operation of "Vistancia
nel" from the property owned by Cox.

14. **Dispute Resolution Mechanisms.**

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

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

- (j) Award Final. Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. Assignment.

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

16. Miscellaneous.

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

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

[Handwritten Signature]

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.

- (7) Recordings. Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.A.S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

**SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company**

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

By: *John M. Deane*
Its ASST Sec

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

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

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

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

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

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

By: *Howard Tigerman*
Vice President of Business Operations

Address: 20401 North 29th Avenue

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

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

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

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

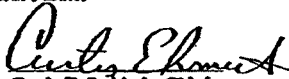
By: Shea Homes Southwest, Inc., an Arizona
corporation, its Member

By: 
Asst Sec

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

By: Sunbelt PP, L.L.P., an Arizona
limited liability limited partnership,
its Manager

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

By: 
Curtis E. Smith, its Chief
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8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

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

EXHIBIT C
Technology & Service Standards

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

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

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

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

EXHIBIT D
Insurance Requirements

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

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

TC-3

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

This AMENDED AND RESTATED CO-MARKETING AGREEMENT ("CMA") is entered into this 25th day of September, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Vistancia, LLC, a Delaware limited liability company (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Co-Marketing Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original CMA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original CMA, all in accordance with and as hereinafter provided in this CMA.
- C. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and 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. 2001-0986738 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- D. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a non-refundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$2,250,000.00.
- E. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built, and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.
- G. Whereas the Master Developer has subjected a portion of the Development (and intends to subject further portions of the Development in the future) to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access

restrictions set forth in the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona.

- H. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- I. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- J. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- K. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment centers, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows, and the Original CMA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superseded in its entirety by this CMA:

AGREEMENT

1. **Definitions.** The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person, or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Amended and Restated Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).

- (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
- (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (l) "CSER" means the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as "Cox High Speed Internet".
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "MUEI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.
- (t) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (u) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.

- (v) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (w) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-0896772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (x) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (y) "Platted Easement Area" shall mean and refer to all of the easement areas designated as "M.U.E." or "Multi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (z) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (aa) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (bb) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, boxes, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/II interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (cc) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (dd) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of

covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

(cc) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(d) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(ee) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(ff) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(g) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

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

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License concurrently with their execution of this CMA. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
- (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
- (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
- (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement

Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.

- (c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(d), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A, provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 6(e).
- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

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

- (a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$2,250,000.00.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 4(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development.
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.

- (c) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(c) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
- (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;
 - (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;
 - (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and License Fees.**

- (a) **Exclusive Rights of Cox. During the Term of this CMA:**
- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
 - (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia

Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).

(iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation or license fees which, in the aggregate, allows a lower payment than is provided for pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation or license fees which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision of hereof, this Section 5(a)(iv) shall terminate and be of no further force or effect (and no party to this CMA shall have any further rights, liabilities or obligations under this Section 5(a)(iv)) upon (a) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (b) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the MUEL.

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

(c) **Reporting by Neighborhood Builders.** During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master

Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

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

commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

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

(f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

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

9. **Representations and Warranties**

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistacia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

19. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

- (b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) Cox Additional Remedies. In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) CSEER and License. No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSEER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSEER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 10(a) above and Section 11 below).

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

- (a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
 - (i) Cessation or Interruption of Communication Service. In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement

with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

- (c) **License Fees under the Non-Exclusive License.** The Non-Exclusive License provides for the payment of a License Fee by Cox to the Access Entity. The License Fee shall be payable by Cox to the Access Entity during the Term of this CMA, provided no License Fee shall be payable after termination of the CMA with respect to any Communication Service that is the subject of such termination, except for License Fees accrued in respect of such Communication Service(s) but unpaid as of the date of such termination. So long as the Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay the License Fee to the Access Entity. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) does not terminate this CMA (and continues to perform under this CMA), Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.
- (d) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

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

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

forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

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

13. Assignment.

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

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer to Vistancix; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. **Miscellaneous.**

(a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).

(b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.

(c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any

counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

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

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

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

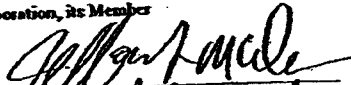
"Master Developer"

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

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2241

VISTANCIA, LLC, a Delaware limited liability company

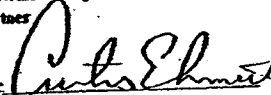
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
Its: VP of Business Operations

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 Risky
General Manager and VP of Business Operations

"Access Entity"

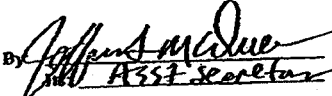
Address: 6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

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

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

By: Vistancia, L.L.C., a Delaware
limited liability company, its Manager

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

By: 
J. J. McQueen
ASST. SECRETARY

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its
Manager

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

By: 
Curtis E. Smith, its

Chief
Operating Officer

Lender Consent:

The undersigned hereby consents to the foregoing Amended and Restated Co-Marketing Agreement, as required by the terms of that certain Assignment of Common Services Easements and Restrictions executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003:

RESIDENTIAL FUNDING CORPORATION, a Delaware
corporation


By: 
Its: DIRECTOR

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Amended and Restated Co-Marketing Agreement dated September 25, 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) In all of their media and print materials that are specific to Vistancia (e.g., "stand alone" media and print materials relating only to Vistancia that do not include any other communities or projects), Buyer and Seller shall advertise Vistancia as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

EXHIBIT B

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EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications

EXHIBIT C

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and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (j) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (k) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.

EXHIBIT C
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(7) provide notice of pending escrow closings

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EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

EXHIBIT F

Insurance Requirements

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

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

EXHIBIT F

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TC-4

Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT

This AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this 25th day of September, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSEER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Property Access Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original PAA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original PAA, all in accordance with and as hereinafter provided in this Agreement.
- C. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- D. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- E. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- F. Whereas the Master Developer has subjected a portion of (and intends to subject further portions of) Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona.
- G. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- H. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona concurrently with the execution of this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide

Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.

1. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

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

AGREEMENT

I. Definitions.

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

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, Arizona, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (k) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (l) "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.
- (m) "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. 2003-0896772, official records of Maricopa County, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (n) "Master Developer" means Vistancia, LLC, a Delaware limited liability company, its successors and assigns.
- (o) "MUEI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.
- (p) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement concurrently with the execution of this Agreement by the parties, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License.
- (q) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (r) "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.
- (s) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Pecosia or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (t) "Vistancia" means the approximately 7,100 acre master planned community developed in Pecosia, Arizona, described in Recital A.
- (u) "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/TFI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.

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

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of

subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.

- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License concurrently with their execution of this Agreement. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and definition shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.
 - (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Areas may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

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

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
- (i) **Video Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
- (ii) **Service Standard & Upgrades.** Subject to any requirements in the franchise agreement between Cox and the applicable franchise authority, Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when Cox makes other products commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
- (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building.

and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.

- (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (f) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.
- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing,

placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.

- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
 - (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
 - (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
 - (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:
- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
 - (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.

- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation or license fees which, in the aggregate, allows a lower payment than is provided for in Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for under Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision hereof, this Section 5(d) shall terminate and be of no further force or effect (and no party to the this Agreement shall have any further rights, liabilities or obligations under this Section 5(d) upon (i) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (ii) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the MUEI.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any

technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of

Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

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

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

9. Representations and Warranties

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

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

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

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

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

(iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date,

and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. Default and Remedies.

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

- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 10(a) above and Section 11 below).

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

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(n), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master

Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a) and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.
- (c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:
- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

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

Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

- (f) Award Final. Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

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

14. Miscellaneous.

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

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

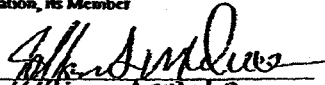
disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any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

- (r) Recordings. Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "M.U.E." (Multi-Use Easement) areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

VISTANCIA, LLC, a Delaware limited liability company

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

By: 
W. V. ASST Secy

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

By: Sunbelt PP, L.L.P., an Arizona limited liability partnership, its Manager

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

By: 
Curtis E. Smith, its Chief Operating Officer

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

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

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

By: _____
J. Steven Rizley
General Manager and VP

Address: 20401 North 29th Avenue
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

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

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

VISTANCIA, LLC, a Delaware limited liability company

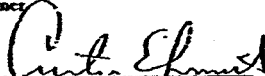
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: _____
Its: _____

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

By: Sunbelt PP, L.L.P., an Arizona limited liability partnership, its Manager

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

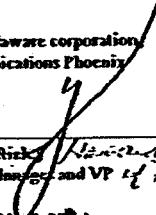
By: 
Curtis E. Smith, its Chief Operating Officer

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

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

By:


J. Steven Ricks, General Manager and VP of Business Development

Address: 20401 North 29th Avenue

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

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

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

By: Vistancia, L.L.C., a Delaware
limited liability company, its Manager


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

By: 
Its: ASST Secretary

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

By: Sunbelt PP, L.L.P., an Arizona
limited liability partnership,
its Manager

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

By: 
Curtis E. Smith, its Chief
Operating Officer

Address: 6720 N. Scottsdale Road
Suite 160
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and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2841

Leader Consent:

The undersigned hereby consents to the foregoing Amended and Restated Property Access Agreement, as required by the terms of that certain Assignment of Common Services Easements and Restrictions executed by Vistaecia Communications, L.L.C., an Arizona limited liability company and Residential Funding Corporation, a Delaware corporation, dated June 27, 2003:

RESIDENTIAL FUNDING CORPORATION, a Delaware corporation


By: 
Its: DIRECTOR

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Amended and Restated Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

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

EXHIBIT C
Technology & Service Standards

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

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

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

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

EXHIBIT D
Insurance Requirements

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

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

TC-5

First American Title

**COURTESY
RECORDING**

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20040212876 03/02/2004 13:54
ELECTRONIC RECORDING

WHEN RECORDED RETURN TO:

301-13-2-1--
leonardil

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

1/2

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": December 31, 2003

"Licensor":	Corporate/Company Name:	Vistancia Communications, L.L.C., an Arizona limited liability company
	State of Organization:	Arizona
	Address:	6720 North Scottsdale Road Suite 160 Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

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

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Property Access Agreement dated as of September 25, 2003, executed by Licensor, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "PAA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23,

2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and PAA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article V below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

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

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the PAA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Video Television Services (as hereinafter defined), Internet Access Services (as hereinafter defined), and Telephone Service (as hereinafter defined) to Buildings (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Video Television Services, Internet Access Services, and Telephone Services or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder, provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the PAA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the PAA, then the terms and conditions of the CSER (or the PAA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as 'Cox High Speed Internet'. As used herein, the term "Video Television Services" shall mean the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services. As used herein, the term "Telephone Service" shall mean local and long distance telephone service provided by Licensee through one or more affiliates or third parties. As used herein, the term "Building" shall mean a building or other structure within the Development that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within the Development is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the PAA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the PAA. Any Transfer to a Person that is not authorized under Section 13(c) of the PAA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the PAA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the PAA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the PAA and shall also be null and void and of no force or effect.

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

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

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

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

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

Section 3.02 Service Standards. All Video Television Services, Internet Access Services, and Telephone Services provided by Licensee to Buildings within the Development shall be of the quality required under the PAA.

ARTICLE IV - INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses) incurred in connection with any third party action, suit or proceeding or any third party claim asserted, to which the Indemnitees may become subject as a result of any failure by Licensee to satisfy its obligations under this License, the PAA, and/or any applicable law, regulation or governmental requirement; provided, however, that

Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - AGREEMENTS BENEFITING THE CITY

Section 5.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEI, to convert the MUEs (as such term is defined in the MUEI) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEI. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - NOTICES

Section 6.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 6.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

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

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

LICENSOR

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
Curtis E. Smith, its Chief Operating Officer

LICENSEE

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

By:

Its: V.P. of Business Operations

Schedule: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of December, 2003, by Howard T. Cochran, the VP Business Operations of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Rhona M. Vilardi
Notary Public

My Commission Expires:



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

LICENSOR

LICENSEE

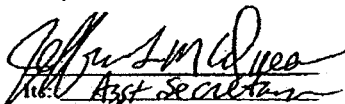
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

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

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

By: _____
Its: _____

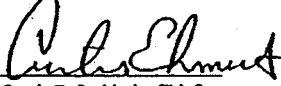
By: Shea Homes Southwest, Inc., an Arizona corporation, its Member

By: 
Asst. Secretary

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

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

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

By: 
Curtis E. Smith, its Chief Operating Officer

Schedule: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____ the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

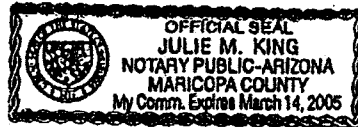
My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, L.L.C., a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005

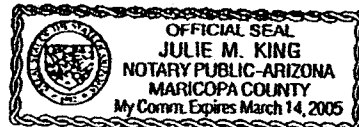


STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Jeffrey S. McQueen, the Assistant Secretary of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, L.L.C., a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



LENDER CONSENT

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

RESIDENTIAL FUNDING CORPORATION, a Delaware corporation

By: *Robert J. Slavich*
Its: DIRECTOR

STATE OF California
County of Los Angeles

On this 5th day of December, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert J. Slavich, personally known to me (or approved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.



Sonia E. Garcia
Notary Public

APPENDIX A**Definitions and Interpretations****ARTICLE I - DEFINITIONS**

Section 1.01 Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications/programming services over lines or wireless channels, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.02 Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, member, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.03 Association. The term "Association" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

Section 1.04 Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

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

Section 1.06 Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.

Section 1.07 Communication Service Provider. The term or phrase "Communication Service Provider" shall mean and refer to any third party provider of one or more Communication Services, which may include a combination of Persons, such that one (1) or more of the Communication Services are available within the Development.

Section 1.08 Communication Services. The term or phrase "Communication Services" shall mean and refer to any one or more of the following: Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication services or utilities, together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.09 Common Services Easements and Restrictions. The term or phrase "Common Services Easements and Restrictions" shall mean and refer to the Common Services Easements and Restrictions to which this Appendix A is attached, as amended or supplemented from time to time.

Section 1.10 Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.11 Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Section 1.12 Declarations. The term "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declaration of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time. Each Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.13 Development. The term "Development" shall mean and refer to the entire parcel of real property the legal description of which is attached hereto as Exhibit A, together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.13. To the extent development of additional real property is or may be contemplated by any or all of the Declarations, then (i) the term "Development" shall be liberally construed to include such real property when and as identified from time to time pursuant to a Supplement to Common Services Easements and Restrictions recorded as hereinafter provided, and (ii) such additional real property may from time to time be annexed to the real property described in Exhibit A and made part of the "Development" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except as provided in this Section 1.13), by the execution and recording in the Office of the Maricopa Recorder of a Supplement to Common Services Easements and Restrictions (the "Supplement to Common Services Easements and Restrictions") signed by Grantor (if Grantor owns the real property being annexed) and Grantee (with the terms "Grantor" and "Grantee" having the meanings provided in the Common Services Easements and Restrictions), and describing the real property to be annexed to Exhibit A (which real property shall be designated in an "Exhibit A Supplement" included in such Supplement to Common Services Easements and Restrictions). The recording of said Supplement to Common Services Easements and Restrictions shall constitute and effectuate the annexation of the real property described such Exhibit A Supplement to the "Development" property, making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A, as if said real property originally had been included in Exhibit A at the time of the initial recordation of the Common Services Easements and Restrictions. Notwithstanding anything to the contrary, if at the time of the recordation of any such Supplement to Common Services Easements and Restrictions, the real property described in such Exhibit A Supplement is owned by a Person other than Grantee, then that Person must join with Grantee in the execution of such Supplement to Common Services Easements and Restrictions.

Section 1.14 E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.15 Excluded Devices. The term or phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, which satisfies both of the following described characteristics:

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

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

Section 1.16 Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Communication Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manholes, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Communication Services, including, without limitation, communication, video, data, e-commerce, Internet, community intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used.

Section 1.17 In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

Section 1.18 In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real property the legal description of which is attached hereto as Exhibit B together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.18. If any Supplement to Common Services Easements and Restrictions is recorded pursuant to Section 1.13 which designates additional real property to be annexed to the Development pursuant to an Exhibit A-Supplement, then such Supplement to Common Services Easements and Restrictions shall also designate the real property (if any) included in such Exhibit A-Supplement that is to be made part of the "In Gross Easement Area" hereunder (which real property shall be designated in an Exhibit B-Supplement" included in such Supplement to Common Services Easements and Restrictions). Upon recordation of such Supplement to Common Services Easements and Restrictions and Exhibit B-Supplement, the term "In Gross Easement Area" shall be liberally construed to include the real property identified in such Exhibit B-Supplement, and the real property identified in such Exhibit B-Supplement shall be part of the "In Gross Easement Area" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except for those approvals required for the recordation of a Supplement to Common Services Easements and Restrictions as provided in Section 1.13). The recording of said Supplement to Common Services Easements and Restrictions

shall constitute and effectuate the annexation of the real property described such Exhibit B-Supplement to the "In Gross Easement Area", making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A as if said real property originally had been included in Exhibit B at the time of the initial recordation of the Common Services Easements and Restrictions.

Section 1.19 Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.20 Mandatory Communication Service Provider. The term or phrase "Mandatory Communication Service Provider" shall mean and refer to a Communication Service Provider that provides one (1) or more of the Mandatory Communication Services. The initial Mandatory Communication Service Providers are listed on Exhibit C attached hereto, and are subject to change in accordance with Section 2.08 and Section 2.09 of the Common Services Easements and Restrictions.

Section 1.21 Mandatory Communication Services. The term or phrase "Mandatory Communication Services" shall mean and refer to the Communication Services set forth on Exhibit C attached hereto.

Section 1.22 Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Section 1.23 Master Declaration. The term or phrase "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation. The Master Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of the Master Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.24 Owner. The term "Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a platted lot, a development parcel or any other land within the Development, or their lessees, tenants or any other successors in interest.

Section 1.25 Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Communication Service Providers to establish Communication Services to an Owner's residential structure, building or other structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure (or building or other structure, as applicable) and upon and within the residential structure (or building or other structure, as applicable) as contemplated by the design for the initial construction thereof, as thereafter modified from time to time.

Section 1.26 Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area (however denominated) under any of the Declarations, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary

or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations and applicable law; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Section 1.27 Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Section 1.28 Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.29 Plats. The term "Plats" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time.

Section 1.30 Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the easement areas designated as "Multi-Use Easement" or "M.U.E." on the Plats.

Section 1.31 Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Section 1.32 Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Communication Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

Section 1.33 Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Section 1.34 Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, to wit:

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

Section 1.35 Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.36 Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.37 Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

Section 1.38 Village Declaration. The term or phrase "Village Declaration" shall mean and refer to each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time. Each Village Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Village Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.39 Visible From Neighboring Property. The term or phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of the In Gross Easement Area.

Section 1.40 Vistancia Maintenance Corporation. The term or phrase "Vistancia Maintenance Corporation" shall mean and refer to the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

ARTICLE II - MISCELLANEOUS AND CONSTRUCTION

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment, Termination or Alteration. Any agreement which incorporates this Appendix A may be altered, terminated or amended in whole or in part, at any time. Any such amendment, termination or alteration must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the agreement being amended, terminated or altered.

This Appendix A may at any time be altered, terminated or amended in whole or in part, as it relates to any agreement which incorporates this Appendix A. Any such amendment, termination or alteration with respect to this Appendix A (i) must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the applicable agreement which incorporates this Appendix A, and (ii) any such amendment, termination or alteration with respect to this Appendix A shall not affect or have any impact upon this Appendix A as it relates to any other agreement incorporating this Appendix A (unless and until this Appendix A is amended, terminated or altered by a written instrument executed by all Parties to such other agreement).

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

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

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties thereto, shall be construed and governed exclusively according to the internal laws of the State of Arizona, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Arizona state courts located in Maricopa County, State of Arizona and of the federal courts with jurisdiction over Maricopa County, State of Arizona, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Arizona state courts located in Maricopa County, State of Arizona or of the federal courts with jurisdiction over Maricopa County, State of Arizona. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Arizona will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Maricopa County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented

or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the term of the agreement is continuing, or the exact date [day, month and year] that the term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" in any agreement which incorporates this Appendix A shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Maricopa County Superior Court, State of Arizona, is closed, then that obligation shall be performed on the next following regular business day.

Section 2.15 Obligation of Good Faith. The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 Not a Partnership. Nothing herein contained or contained in any agreement which incorporates this Appendix A shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 Exhibits, Appendices and Schedules. All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

SCHEDULE 1.01

Other Easements or Licenses

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

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona and Partial Termination, Abandonment and Extinguishment of Easement recorded on December 24, 2003, in Instrument No. 2003-1728051, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

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

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

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19, recorded in Book 655 of Maps, page 35, official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded October 10, 2003 as 2003-1423458 of official records of Maricopa County, Arizona and Certificate of Correction recorded December 9, 2003, as 2003-1668089 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A10A, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 33.

Final Plat for Vistancia Village A Parcel A12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 32.

Final Plat for Vistancia Village A Parcel A13, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 31.

Final Plat for Vistancia Village A Parcel A14, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 661 of Maps, Page 25 Arizona and Certificate of Correction recorded January 2, 2004 as 2004-0000466 of official records of Maricopa County, Arizona.

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Final Plat for Vistancia Village A Parcel A19, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 39.

Final Plat for Vistancia Village A Parcel A20, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 3.

Final Plat for Vistancia Village A Parcel A32, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 34.

Final Plat for Vistancia Village A Parcel A33, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 29.

Final Plat for Vistancia Village A Parcel A36, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 30.

Final Plat for Vistancia Village A Parcel A37, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 662 of Maps, Page 26.

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor a License Fee according to the following scale based on the Applicable License Fee percentage (determined pursuant to the chart below according to the Penetration Percentage (as hereinafter defined) within each Building) multiplied by the Monthly Recurring Revenue (as hereinafter defined) for that Building. The License Fee shall be calculated (and paid by Licensee, if owed pursuant to the provisions of this Schedule 3.01) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Licensor would receive a License Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable License Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95 %	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher License Fee under the above chart, then Licensor shall be entitled to the higher License Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Licensor shall be paid the Applicable License Fee, if any, corresponding to the decreased Penetration Percentage.

As used herein, the term "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Licensee (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Licensee Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

In addition to the exclusion from MRC set forth above, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of License Fee payments due to Licensor hereunder.

The parties acknowledge that Licensee may be required by federal or state law, to lease or allow use of, portions of the Licensee Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Licensee from such third party providers be deemed MRC or subject to payment of License Fees hereunder. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Licensee Technology Facilities as

described above shall not be deemed an assignment, sale or transfer of the Licensee Technology Facilities or a delegation or assignment of Licensee's rights.

All payments of the License Fees shall be payable to Licensee without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Licensee may designate. Payments of License Fees shall be made during the Term of the License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the MRC for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the PAA.

TC-6

First American Title

**COURTESY
RECORDING**

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20040212877 03/02/2004 13:54
ELECTRONIC RECORDING

WHEN RECORDED RETURN TO:

301-13-2-2--
leonardil

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

2/2

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": December 31, 2003

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications Phoenix, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

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

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Co-Marketing Agreement dated as of September 25, 2003, executed by Licensor, Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "CMA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23,

2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and CMA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article V below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

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

ARTICLE II - LICENSE

Section 2.01 Premises and Use Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the CMA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Cable Television Services, Internet Access Services (as hereinafter defined), Telephone Services (local) and Telephone Services (long distance) to SFRs (as hereinafter defined) and MFUs (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the CMA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the CMA, then the terms and conditions of the CSER (or the CMA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as "Cox High Speed Internet". As used herein, the term "SFR" shall mean a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse; and, the term "MFU" shall mean residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.

Section 2.02 Term This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the CMA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the CMA. Any Transfer to a Person that is

not authorized under Section 13(c) of the CMA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the CMA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the CMA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the CMA and shall also be null and void and of no force or effect.

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

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

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

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

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

Section 3.02 Service Standards. All Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) provided by Licensee within the Development shall be of the quality required under the CMA.

ARTICLE IV - INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses) incurred in connection with any third party action, suit or proceeding or any third party claim asserted, to which the Indemnitees may become subject as a result of any failure by Licensee to satisfy its obligations under this License, the CMA, and/or any applicable law, regulation or governmental requirement; provided however that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and

assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - AGREEMENTS BENEFITTING THE CITY

Section 5.01 Payment of Franchise Fees. Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 Acknowledgment of City Rights and Waiver of Claims. Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEI, to convert the MUEs (as such term is defined in the MUEI) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEI. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 Agreement to be Bound by Peoria City Code. Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 5.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - NOTICES

Section 6.01 Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 6.02 Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

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

Section 6.04 Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

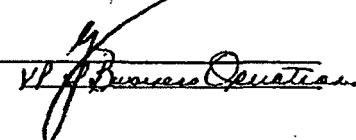
LICENSOR

LICENSEE

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

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

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

By: 
Its: VP of Business Operations


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

By: _____
Its: _____

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

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

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

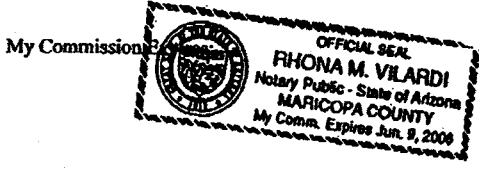
By: 
Curtis E. Smith, its Chief Operating Officer

Schedules: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 23 day of December, 2003, by Harold Tigerman, the Vice President/Operations of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Rhona M. Vilardi
Notary Public



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

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

LICENSOR

LICENSEE

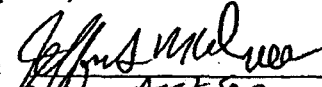
VISTANCIA COMMUNICATIONS, L.L.C., an Arizona limited liability company

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

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

By: _____
Its: _____

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

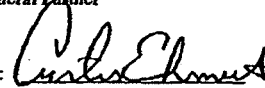
By: 

Asst. Sec.

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

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

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

By: 

Curtis E. Smith, its Chief Operating Officer

Schedules: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

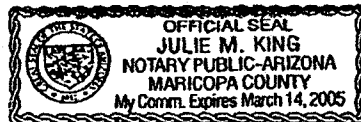
My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Jeffrey S. McQueen, the Assistant Secretary of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires: 3/14/2005



LENDER CONSENT

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

RESIDENTIAL FUNDING CORPORATION, a Delaware corporation

By: *Robert J. Plavchak*
Its: DIRECTOR

STATE OF California
County of Los Angeles SS.

On this 5th day of December, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert J. Plavchak, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.



Sonia E. Garcia
Notary Public

APPENDIX A**Definitions and Interpretations****ARTICLE I - DEFINITIONS**

Section 1.01 Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications/programming services over lines or wireless channels, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.02 Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, member, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.03 Association. The term "Association" shall mean and refer to each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

Section 1.04 Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

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

Section 1.06 Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement Area and the Service Easement Area, collectively.

Section 1.07 Communication Service Provider. The term or phrase "Communication Service Provider" shall mean and refer to any third party provider of one or more Communication Services, which may include a combination of Persons, such that one (1) or more of the Communication Services are available within the Development.

Section 1.08 Communication Services. The term or phrase "Communication Services" shall mean and refer to any one or more of the following: Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication services or utilities, together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.09 Common Services Easements and Restrictions. The term or phrase "Common Services Easements and Restrictions" shall mean and refer to the Common Services Easements and Restrictions to which this Appendix A is attached, as amended or supplemented from time to time.

Section 1.10 Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.11 Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Section 1.12 Declarations. The term "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declaration of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time. Each Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.13 Development. The term "Development" shall mean and refer to the entire parcel of real property the legal description of which is attached hereto as Exhibit A, together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.13. To the extent development of additional real property is or may be contemplated by any or all of the Declarations, then (i) the term "Development" shall be liberally construed to include such real property when and as identified from time to time pursuant to a Supplement to Common Services Easements and Restrictions recorded as hereinafter provided, and (ii) such additional real property may from time to time be annexed to the real property described in Exhibit A and made part of the "Development" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except as provided in this Section 1.13), by the execution and recording in the Office of the Maricopa Recorder of a Supplement to Common Services Easements and Restrictions (the "Supplement to Common Services Easements and Restrictions") signed by Grantor (if Grantor owns the real property being annexed) and Grantee (with the terms "Grantor" and "Grantee" having the meanings provided in the Common Services Easements and Restrictions), and describing the real property to be annexed to Exhibit A (which real property shall be designated in an "Exhibit A Supplement" included in such Supplement to Common Services Easements and Restrictions). The recording of said Supplement to Common Services Easements and Restrictions shall constitute and effectuate the annexation of the real property described such Exhibit A Supplement to the "Development" property, making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A, as if said real property originally had been included in Exhibit A at the time of the initial recordation of the Common Services Easements and Restrictions. Notwithstanding anything to the contrary, if at the time of the recordation of any such Supplement to Common Services Easements and Restrictions, the real property described in such Exhibit A Supplement is owned by a Person other than Grantee, then that Person must join with Grantee in the execution of such Supplement to Common Services Easements and Restrictions.

Section 1.14 E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.15 Excluded Devices. The term or phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, which satisfies both of the following described characteristics:

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

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

Section 1.16 Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Communication Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manholes, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Communication Services, including, without limitation, communication, video, data, e-commerce, Internet, community intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used.

Section 1.17 In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

Section 1.18 In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real property the legal description of which is attached hereto as Exhibit B together with such additional real property as is hereafter annexed thereto in accordance with the provisions of this Section 1.18. If any Supplement to Common Services Easements and Restrictions is recorded pursuant to Section 1.13 which designates additional real property to be annexed to the Development pursuant to an Exhibit A-Supplement, then such Supplement to Common Services Easements and Restrictions shall also designate the real property (if any) included in such Exhibit A-Supplement that is to be made part of the "In Gross Easement Area" hereunder (which real property shall be designated in an "Exhibit B-Supplement" included in such Supplement to Common Services Easements and Restrictions). Upon recordation of such Supplement to Common Services Easements and Restrictions and Exhibit B-Supplement, the term "In Gross Easement Area" shall be liberally construed to include the real property identified in such Exhibit B-Supplement, and the real property identified in such Exhibit B-Supplement shall be part of the "In Gross Easement Area" without the approval, assent or vote of any Owner, Vistancia Maintenance Corporation, any Association, or any other Person being required (except for those approvals required for the recordation of a Supplement to Common Services Easements and Restrictions as provided in Section 1.13). The recording of said Supplement to Common Services Easements and Restrictions

shall constitute and effectuate the annexation of the real property described such Exhibit B-Supplement to the "In Gross Easement Area", making said real property subject to the Common Services Easements and Restrictions, this Appendix A, and any agreement which incorporates this Appendix A, as if said real property originally had been included in Exhibit B at the time of the initial recordation of the Common Services Easements and Restrictions.

Section 1.19 Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.20 Mandatory Communication Service Provider. The term or phrase "Mandatory Communication Service Provider" shall mean and refer to a Communication Service Provider that provides one (1) or more of the Mandatory Communication Services. The initial Mandatory Communication Service Providers are listed on Exhibit C attached hereto, and are subject to change in accordance with Section 2.08 and Section 2.09 of the Common Services Easements and Restrictions.

Section 1.21 Mandatory Communication Services. The term or phrase "Mandatory Communication Services" shall mean and refer to the Communication Services set forth on Exhibit C attached hereto.

Section 1.22 Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Section 1.23 Master Declaration. The term or phrase "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation. The Master Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of the Master Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.24 Owner. The term "Owner" shall mean the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a platted lot, a development parcel or any other land within the Development, or their lessees, tenants or any other successors in interest.

Section 1.25 Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Communication Service Providers to establish Communication Services to an Owner's residential structure, building or other structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure (or building or other structure, as applicable) and upon and within the residential structure (or building or other structure, as applicable) as contemplated by the design for the initial construction thereof, as thereafter modified from time to time.

Section 1.26 Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area (however denominated) under any of the Declarations, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary

or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations and applicable law; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Section 1.27 Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Section 1.28 Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.29 Plats. The term "Plats" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time.

Section 1.30 Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the easement areas designated as "Multi-Use Easement" or "M.U.E." on the Plats.

Section 1.31 Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Section 1.32 Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Communication Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

Section 1.33 Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Section 1.34 Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:

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

Section 1.35 Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.36 Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.37 Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

Section 1.38 Village Declaration. The term or phrase "Village Declaration" shall mean and refer to each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time. Each Village Declaration shall be subject and subordinate to the Common Services Easements and Restrictions, and in the event of any conflict or inconsistency between the provisions of any Village Declaration and the Common Services Easements and Restrictions, the provisions of the Common Services Easements and Restrictions shall prevail.

Section 1.39 Visible From Neighboring Property. The term or phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of the In Gross Easement Area.

Section 1.40 Vistancia Maintenance Corporation. The term or phrase "Vistancia Maintenance Corporation" shall mean and refer to the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

ARTICLE II - MISCELLANEOUS AND CONSTRUCTION

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment, Termination or Alteration. Any agreement which incorporates this Appendix A may be altered, terminated or amended in whole or in part, at any time. Any such amendment, termination or alteration must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the agreement being amended, terminated or altered.

This Appendix A may at any time be altered, terminated or amended in whole or in part, as it relates to any agreement which incorporates this Appendix A. Any such amendment, termination or alteration with respect to this Appendix A (i) must take the form of a written instrument setting forth the amendments, terminations or alterations, which written instrument must be signed by all Parties to the applicable agreement which incorporates this Appendix A and (ii) any such amendment, termination or alteration with respect to this Appendix A shall not affect or have any impact upon this Appendix A as it relates to any other agreement incorporating this Appendix A (unless and until this Appendix A is amended, terminated or altered by a written instrument executed by all Parties to such other agreement).

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

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

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties thereto, shall be construed and governed exclusively according to the internal laws of the State of Arizona, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Arizona state courts located in Maricopa County, State of Arizona and of the federal courts with jurisdiction over Maricopa County, State of Arizona, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Arizona state courts located in Maricopa County, State of Arizona or of the federal courts with jurisdiction over Maricopa County, State of Arizona. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Arizona will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Maricopa County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented

or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the term of the agreement is continuing, or the exact date [day, month and year] that the term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A, or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" in any agreement which incorporates this Appendix A shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Maricopa County Superior Court, State of Arizona, is closed, then that obligation shall be performed on the next following regular business day.

Section 2.15 Obligation of Good Faith. The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 Not a Partnership. Nothing herein contained or contained in any agreement which incorporates this Appendix A shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 Exhibits, Appendices and Schedules. All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

SCHEDULE 1.01

Other Easements or Licenses

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

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, and the City of Peoria, Arizona, an Arizona chartered municipal corporation, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona and Partial Termination, Abandonment and Extinguishment of Easement recorded on December 24, 2003, in Instrument No. 2003-1728051, official records of Maricopa County, Arizona.

Non-Exclusive License Agreement executed by Vistancia Communications, L.L.C., an Arizona limited liability company and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

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

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

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat for Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat for Sunset Ridge at Trilogy at Vistancia Parcels C15, C16, C17, C18 and C19, recorded in Book 655 of Maps, page 35, official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded October 10, 2003 as 2003-1423458 of official records of Maricopa County, Arizona and Certificate of Correction recorded December 9, 2003, as 2003-1668089 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A10A, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 33.

Final Plat for Vistancia Village A Parcel A12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 32.

Final Plat for Vistancia Village A Parcel A13, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 31.

Final Plat for Vistancia Village A Parcel A14, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 661 of Maps, Page 25 Arizona and Certificate of Correction recorded January 2, 2004 as 2004-0000466 of official records of Maricopa County, Arizona.

Final Plat for Vistancia Village A Parcel A19, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 39.

Final Plat for Vistancia Village A Parcel A20, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 656 of Maps, Page 3.

Final Plat for Vistancia Village A Parcel A32, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 34.

Final Plat for Vistancia Village A Parcel A33, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 29.

Final Plat for Vistancia Village A Parcel A36, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 655 of Maps, Page 30.

Final Plat for Vistancia Village A Parcel A37, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 662 of Maps, Page 26.

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor a percent of revenue, according to the following scale, received by Licensee as hereinafter provided. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate shall be calculated by dividing active customers by total homes (i.e., total SFRs and MFUs) passed. Penetration shall be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Local Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

The License Fee shall be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for payment of the License Fee.

All payments of the License Fees hereunder shall be payable to Licensor without demand at the address set forth in this License, or to such other address as Licensor may designate. Payments of License Fees shall be made during the Term of this License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to

20040212877

such term in the CMA.

TC-7

Vistancia Nolaan Meeting w/ Mark 9/9/02
 9/17/02
 Mark Hummons } Sumbelt
 Curt Smith }
 Byron Augustine } Shea 750-1000 homes per year
 Rick Andreone } Commercial 2005 occupants
 2006

✓ There will be a business park. ^{entitled} 90 acres ^{planned} 60 acres
 Ms. Ellen - Where does the CBS 1-800 number go? ^{commission} \$??

- Shea's biggest concern is how Cox can support the business parks.

done ✓ Set up a meeting for commercial engineers to meet w/ Mark for design questions

Surprise Forms agreement ✓ For Marketing Compensation on phone anything above 75% we split the cost with Shea, or lessen capital contribution

November 2003 live service

Shea ✓ will give marketing agreement and would like marketing compensation

done 1. Nolaan will work with Mark on Engineering this week.
 2. September 27 draft (marry CBS & Marketing Agreement, get w/ Dan on financials.)

3-29-01

CONFIDENTIAL

C01776

TC-8

Vistancia

9/16/02

Attendees

Nolan	Mary
Jeffery	Herb
Sheila	Jan
Percy	Paul
Daniel	Robert
Don	Bill

Master agreement (Umbrella)

NBO CBS

tweak Surprise Farms with an loi. for commercial
1st step

Action Items

+ Rick Andrene	} Meeting	20' x 20' minimum MTE land 1/4 acre
+ Curt Smith		
+ John Graham		

(480) 905-0770

10:30

12:00

Robert
Sheila
Paul
Jan
Jeff

Scottsdale Spectrum

Notes out regarding meeting

TC-9

9/18/02 Vistancia

Sunbelt Holdings

Airt Jeffery Robert

John Paul

Rick Sheila

Bulk

- propose for cable ¹/₃ ~~net~~ Internet

Multiple HOA's 2-3 thousands homes per subdivision

- Structured wiring component like Surprise Farms

Model Complexes

- Active Adult - Separate model complex

- PH1 common models. Separate models per builder after ²³ yrs.

- Information center (copy information here.)

Surprise Farms agreement

language changes

1. transferring language for M.C.

TC-10

VISTANCIA

Surprise Village Company, L.L.C.
&
COXCOM, INC.
CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this 29th day of March, 2001 between Surprise Village Company, L.L.C., an Arizona limited liability company "Master Developer", and COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox", in the context of the following facts:

RECITALS

A. Master Developer is the beneficial owner and is developing Surprise Farms, a master planned community of approximately 1,415 acres and 7,000 home-sites, located in the City of Surprise, Arizona "Surprise", in accordance with that certain Development Agreement executed by Surprise on July 10, 1995 and by Master Developer on July 11, 1995 and thereafter recorded in the official records of Maricopa County, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to make available as an amenity for residents of Surprise Farms the Technology Facilities and the Technology Services.

C. Cox has the financial ability and the technical expertise to install the Technology Facilities necessary to provide to Surprise Farms the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Maricopa County that includes Surprise Farms under its License from Maricopa County, has the legal right to provide Data Service to Surprise Farms, and Cox and/or an affiliated company has the legal right to provide Telephone Service to Surprise Farms and will make it available to SFR's and MFU's in Surprise Farms when it is both technically and operationally feasible.

E. Master Developer anticipates transferring portions of Surprise Farms to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Surprise Farms, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

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

AGREEMENT

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

- (a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
- (b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) ~~HS~~ ~~@Home~~ means the independent Internet Service Provider with which Cox currently contracts for Internet gateway service.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (g) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (h) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications PhoenixCox Communications Phoenix, and its permitted successors and assigns.
- (i) "Cox@Home" means Cox's high speed Internet access service currently provided to SFR's in affiliation with the Internet Service Provider, @Home.
- (j) "Cox@Work" means Cox's high speed Internet access service currently provided to commercial business clients in affiliation with the Internet Service Provider, @Home.
- (k) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (l) "Data Service" means digital data communication capabilities and interconnectivity with the Internet and, with an Intranet and "Data Service" may include an Internet gateway such as either ~~Cox@Home~~ or ~~Cox@Work~~, as applicable.
- (m) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (n) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (o) "Initial Term" has the meaning provided in Section 2.
- (p) "License" means the right that Cox holds from Surprise or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Surprise Farms.
- (q) "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.

(r) "Marketing Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.

(s) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Surprise Farms.

(t) "Master Developer" means Surprise Village Company L.L.C., an Arizona limited liability company.

(u) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.

(v) "Monetary Default" has the meaning set forth in subsection 10(a)(i).

(w) "Neighborhood Builder" means any person or entity that engaged in the business of constructing SFR's for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or platted lots, for the purpose of developing and construction of one or more SFR's thereon.

(x) "Official Records" means the official records of Maricopa County, Arizona, pertaining to real property.

(y) "Owners Association" means the Surprise Farms Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Surprise Farms recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFR's in all or any portion of Surprise Farms, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Surprise Farms.

(z) "Performance Default" has the meaning set forth in subsection 10(a)(ii).

(aa) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "super-pads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFR's, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Surprise or other political subdivision with jurisdiction over Surprise Farms or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFR's and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Surprise or other political subdivision with jurisdiction over Surprise Farms or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat"

(bb) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFR's set forth in Exhibit D.

JD, modified initial 1/2/01

(cc) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFR's within Surprise Farms, exclusive only of pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.

(dd) "Surprise Farms" means the SFR's within the master planned community, being developed in Maricopa County, Arizona, described in Recital A.

for what this plan etc

(ee) "Surprise Farms net" means the IP based Intranet communications system that Cox Communications will, if requested by Master Developer, have produced, established and operated for Surprise Farms to provide electronic communications capabilities and other customized community services to residences in Surprise Farms. Cox's right to produce this Intranet shall not be exclusive, and nothing in this CMA shall require Master Developer to utilize Cox to produce this Intranet for Surprise Farms. *AE*

(ff) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Surprise Farms, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/TI interfaces, cabling interfaces, patch panels and cords, routers/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.

(gg) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation and management of the content on the internet shell page for Surprise Farms-net.

(hh) "Technology Services" means the telephone service, Data Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Surprise Farms.

(ii) "Telephone Service" means local telephone service with access to long distance telephone service provided by or through Cox or its affiliate or third party (the long distance carrier to be selected by the subscriber).

(jj) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(kk) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(ll) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage

or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term.

The initial term of this CMA (the "Initial Term") shall be shall be for a period of ~~25~~¹⁵ years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the renewal term then in effect, as applicable). The Initial Term and any renewal term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. Easements and Access Rights.

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements, in those portions of the parcels comprising Surprise Farms which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunication, data transfer, and similar communication systems and facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Surprise Farms or Master Developer's use and enjoyment thereof.

(ii) Right of Entry to Install Technology Facilities. During the Term of this CMA, within the period allocated by Master Developer and Maricopa County to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by Maricopa County or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to

construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFR's within Surprise Farms, at the sole cost and expense of Cox.

(b) Subdivision Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such SFR Lot Plat by Master Developer and Surprise (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the easements and use rights provided for in this CMA are established, which easements shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) Technology Facilities-SFR. Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telephone, telecommunication, data transfer and similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(1) The SFR's shall have non-exclusive access to public easements and non-exclusive access to private easements.

(2) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(3) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

(4) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement have the right to enter (by virtue of the easements reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) Non-Exclusive License to Cox. Cox shall have, for the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all SFR's that may be built within the subdivision that is the subject of such SFR Lot Plat, at the sole cost and expense of Cox.

(iii) Pre-Wire Specifications. Master Developer shall use its reasonable good faith efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A: ~~provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder; (ii) thereafter, Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.~~

(iv) Post-CMA Closings. As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b).

(c) License For Ingress & Egress to Subdivision Parcels. With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) Form of Easements. The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) Repair of Improvements. Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

Amend
(a) Preferred Right to Offer Technology Services. During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFR's and MDU's at Surprise Farms, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Surprise Farms from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Surprise Farms operated by a Neighborhood Builder that purchases any portion of Surprise Farms from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of

Surprise Farms shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

*at turnover date
Commission
language*

(b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Surprise Farms owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Surprise Farms, other than any Neighborhood Builder that purchases any portion of Surprise Farms from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Surprise Farms, and the Turnover Date has occurred with respect to all Owners Associations within Surprise Farms.

(c) Cox Obligation to Provide Technology Services. Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Surprise Farms as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) CATV. Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, or any resident of a SFR or MDU to keep CATV at a level of service that equals or exceeds the services being offered by similar first-class providers of such cable television services within the metropolitan statistical area of the community. Cox will offer future technology services comprising all or a portion of the Technology Services to Surprise Farms and the residents thereof, when it is both technically and operationally feasible, including wireless services when Cox has the right to offer any such Technology Service to Surprise Farms.

(iii) Telephone Service. Subject to legal and regulatory constraints, Telephone Service for each resident of any SFR or of any MDU that subscribes for 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, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) Data Service. Subject to legal and regulatory constraints, Data Service for each resident of any SFR that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFR's within Surprise Farms at the sole cost and expense of Cox, provided that Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this CMA, so that the Technology Services can be provided to each SFR upon initial occupancy.

(i) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFR's, which shall be the responsibility of the applicable Neighborhood Builder(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Surprise Farms in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Surprise Farms in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Surprise Farms (limited, in the case of trenches in the right of way dedicated to Maricopa County, Surprise or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFR's in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFR's and buildings; and (5) with respect to any portion of Surprise Farms conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) Selection of Contractors. Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and necessary 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 Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Surprise Farms or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) Early Termination Upon Cessation of Service. In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints,

Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) Individual Subscriber Basis. Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Surprise and the area of Maricopa County adjacent to Surprise Farms and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission. Notwithstanding any contrary provision of this CMA, all residents of Surprise Farms shall receive a 5% discount (from the prevailing retail rate) on all Cable Television and Data Services provided by Cox, provided, however, that Cox shall not be required to provide such discount if (and only to the extent that) it is not permitted to do so by applicable law. This discount will only be available to the initial Owner of a newly constructed residence. Master Developer shall not restrict or discriminate against reasonable re-marketing efforts by Cox with respect to residents who do not order Technology Services or residents who order less than all of the Technology Services available so long as Cox abides by applicable law and the requirements of any applicable recorded declaration of covenants, conditions and restrictions (and rules promulgated thereunder).

*Bulk Discount
Data
5%*

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

(h) Model Home Service. Cox shall make available in one main model home per Neighborhood Builder, at Cox's sole cost and expense:

(i) Digital CATV. One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) ~~Cox@Home~~ Demo. One "comp" (non-chargeable) Cox@Home demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) Signage at Point of Delivery. Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

(iv) Penalty For Failure to Provide Model Home Services. Cox shall remit to Master Developer a payment of Five Hundred Dollars (\$500.00) for each day that a model home is ready to receive the Technology Services and Cox fails to provide any or all of such Technology Services to any such model home. Cox shall have no liability or obligation for the payment of such penalty fee, however, if the cause of delay is due to an Unavoidable Delay, as defined in subsection 1(II).

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(v) Surprise Farms Website. If requested by Master Developer upon at least 120 days prior written notice to Cox, Cox shall include in Cox@Home or Cox@Work a home page shell for

Surprise Farms homeowners designed by Master Developer (or its assigns) and its content provider subject to the mutual approval of both parties. If such home page is produced by Cox, then such home page shall be co-branded with the trade names and trademarks for the Surprise Farms internet home page and either Cox@Home or Cox@Work. Cox shall have no obligation to provide content development or content management services for the internet page for Surprise Farms. Cox will, however make the intranet company employed by Cox available to offer content development and management services on terms and conditions mutually acceptable to it and the Technology Manager in reference to the internet home page. Nothing in this CMA shall require Master Developer to utilize Cox to produce the intranet or internet home page for Surprise Farms. Master Developer shall be free to utilize a third party to produce a home page or community scheduling system for Surprise Farms (whether internet- or intranet-based), and this CMA (including, but not limited to, the exclusive and/or preferred marketing rights granted to Cox under Sections 4 and 5 of this CMA) shall not in any way prevent or restrict Master Developer or any Neighborhood Builder in connection with the advertising or marketing of that service to residents of Surprise Farms.

5. Exclusive Marketing Rights and Marketing Incentive Fees.

(a) Exclusive Rights of Cox. During the Term of this CMA:

(i) Endorsement by Master Developer. Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Surprise Farms;

(ii) Marketing and Promotion of Technology Services. Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Surprise Farms, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Surprise Farms from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Surprise Farms shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) Similar Agreements and Co-Branding. Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than: Cox@Home, Cox@Work, any entity which Cox selects to replace its contract with @Home or @Work and advertising and marketing described in the last sentence of subsection 4(h)(vi).

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

Make determination on what date

(c) **Marketing Incentive Fee.** Cox shall pay to Master Developer a Marketing Incentive Fee during the Term of this CMA, as set forth in subsection (d); provided no Marketing Incentive Fee shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Incentive Fees accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

How?

(d) **Calculation and Payment of Marketing Incentive Fee.** As consideration for Master Developer's endorsement of Cox as the preferred provider of Technology Services to Surprise Farms and Master Developer's other obligations provided for in this CMA, Cox shall pay to Master Developer, by certified check or other immediately available funds, no later than 100 days following the end of each calendar quarter during the Term of this CMA, commencing following the calendar quarter during which the first SFR is occupied, a Marketing Incentive Fee for Services Revenues generated from Technology Services provided by Cox to Surprise Farms. "Services Revenues" means all gross revenues actually collected by Cox on account of Technology Services provided to SFR's within Surprise Farms, exclusive only of pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereafter shall not be deducted in determining "Services Revenues" under this CMA. The Marketing Incentive Fee is determined based on the penetration rate of Cable Television, Local Telephone and Data Services under the Payment Schedules set forth below in this subsection (d). A separate Payment Schedule applies to Services Revenue collected for each of Cable Television, Local Telephone and Data Services; as a result, Cox shall keep and maintain a separate accounting of its penetration rate for, and Services Revenues collected by Cox on account of, Cable Television, Local Telephone and Data Services.

PAYMENT SCHEDULES

Cable Television Penetration Rate*	Percentage of collected Services Revenue from Cable Television to be paid to Master Developer
30% to 39%	3%
40% to 49%	4%
50% to 59%	5%
60% to 69%	6%
70% to 79%	7%
80% to 89%	8%
90% to 100%	9%

Local Telephone Penetration Rate*	Percentage of collected Services Revenue from Local Telephone to be paid to Master Developer
30% to 39%	3%
40% to 49%	4%
50% to 59%	5%
60% to 69%	6%
70% to 79%	7%
80% to 89%	8%
90%-100%	9%

Data Services Penetration Rate*	Percentage of collected Services Revenue from Data Services to be paid to Master Developer
30% to 39%	3%
40% to 59%	5%
60% to 79%	7%
80% to 100%	10%

* Penetration rates will be based on Technology Services provided to SFR's built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made.

(e) **Reporting by Neighborhood Builders.** During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFR's during the prior month, and the respective dates of closing, and (ii) deliver to Cox an updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Incentive Fees, Master Developer shall have right to audit the books and records of Cox for the period covered by such payment of Marketing Incentive Fees to verify the amount of Marketing Incentive Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Surprise Farms during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Surprise Farms is conveyed to such Neighborhood Builder for development with SFR's. 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 Surprise Farms 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 agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox' cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Surprise Farms.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening, or closing of any joint trench on or serving any portion of Surprise Farms, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology

Facilities described in Exhibit B for those portions of Surprise Farms that are sold by Master Developer for development of SFR's to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Surprise Farms or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Surprise Farms 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. 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' sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues within Surprise Farms.

(f) **Marketing of Apartment Parcels**

In order to assist Master Developer in its marketing of apartment parcels to potential purchasers/developers thereof and integration of these parcels into "Surprise Farmsnet", Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such

potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

(iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict

with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

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(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the non-defaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Data Service to Surprise Farms or any portion thereof, due to loss of its License from Maricopa County or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Surprise Farms or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Local Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within 10 business days of Master Developer's receipt of Cox' response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox' response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox' receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFR's and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFR's in Surprise Farms. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Surprise Farms not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Incentive Fees earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Surprise or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Surprise or other applicable governmental right of way; with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Surprise Farms to be built out by that Neighborhood Builder; or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Surprise or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Surprise or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is

appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Surprise Farmsnet" and Master Developer shall remove all of its equipment used in the operation of "Surprise Farms net" from the property owned by Cox.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment

(a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Surprise Farms; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

(c) **Cox.** Cox may assign Cox's interest in this CMA and in any easement, permit or other assurances of access granted to Cox hereunder or pursuant hereto respecting its Technology Facilities without Master Developer's consent (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a

buyer (whether by sale or exchange) of substantially all the assets of Cox used in the operation of Cox's business conducted in Surprise or other applicable governmental authority; or to any transferee of the License or other legal authority of Cox to provide CATV to customers in Surprise or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this CMA that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) Governing Law. This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) Notices. Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) Relationship of Parties. The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) Third Party Beneficiaries. Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) Waiver. No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) Writing Required. No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from the full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) Brokerage. Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) Additional Documents. Each party hereto shall execute and deliver all such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) Continuing Effect. All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) Meaning of Certain Terms. When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) Rules of Construction. The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the

opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) Counterparts. This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

No recording. Neither party shall record this CMA or any memorandum of this CMA.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Address:
11811 North Tatum Boulevard
Suite 4052
Phoenix, AZ 85028-2399
Phone: (602) 953-0477
FAX: (602) 953-8707

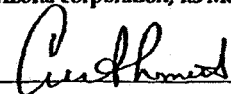
and required copy to
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 905-0770
Facsimile: (480) 905-1419

Surprise Village Company, L.L.C., an Arizona limited liability company

By: Carefree Sunbelt I L.L.C., an Arizona limited liability company, its Manager

By: Sunbelt Holdings II L.L.C., an Arizona limited liability company, its Member

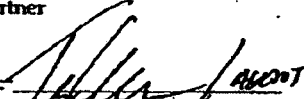
By: Sunbelt Holdings Management, Inc., an Arizona corporation, its Manager

By: 
Its: EVP/COO

By: Carefree Partners, L.L.C., an Arizona limited liability company, its Member

By: West Management Limited Partnership, an Arizona limited partnership, its Manager

By: The Richard West Company, an Arizona corporation, its General Partner

By: 
Richard B. West III, its President

By: 

"Cox"

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

Attention: Vice President Business Services
Fax: 623.322.7860
Telephone: 602.866.0072.

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


By: 
David Harris, Vice President, Sales and Marketing

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____, 2001 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;

(e) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to Maricopa County, the City of Surprise or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by Maricopa County, the City of Surprise or applicable governmental authority to install in such trenches;

(f) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Surprise Farms being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Have Bill review

EXHIBIT B

Technology Facilities

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

(1) **Network.** Plant activated to 750 Mhz 2-way modified HFC Network with a fiber Ring-in-Ring backbone. Cox will install one or two additional two or three inch shadow conduits to enable additional Technology Services by Cox and/or Technology Service Enhancements. Active devices will be limited to one power supply per 300 home average node and no more than five (5) coaxial amplifiers per cascade.

(a) **Bellcore** Voice services will be offered in compliance with the ACC's and Standards of Service

(b) **RSM Hub and MTC.** New Surprise Farms hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling future addition of new, and/or dedicated applications. Fiber or HFC connection to Cox's Master Telecommunications Center in Peoria or as designated by Cox engineering.

(c) **Redundancy.** Redundant interconnection with the ILECs, DXCs and ISPs must be provided for system integrity and access to the public network.

(2) **Network Schematic** The Surprise Farms network schematic will be provided upon completion of the network design. Surprise Farms must not copy or distribute the single copy provided.

(3) **Bandwidth.** The network must be capable of delivery in accordance with the Technology & Service Standards established under the FCC and established franchised commitments under the following:

(a) **Video.** Meet or exceed industry standards for quantity and quality of analog and digital cable programming.

(b) **Data.** Data network will be alarmed and monitored at the MTC and SOC.

(c) **Voice.** Minimum average capacity of 2.6 lines per house

(4) **Service Bandwidth Guarantee.** In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node over one month's time, Cox shall at its cost do one or more of the following:

(a) Split the affected node(s) to lessen the number of homes served (but without obligation to split below average of 50 units per node)

(b) Implement alternate modulation or compression techniques if technically practicable

(c) Open additional data channels; and/or

(d) Implement such other actions as Cox deems appropriate to meet the minimums, after consultation with the review by Master Developer.

EXHIBIT C

Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Surprise Farms, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Master Developer shall select options from the following Marketing & Promotion Program described in this Exhibit. This Exhibit is intended to set forth the menu of services and support that may be requested of Cox by Developer, and Master Developer shall determine in its sole and absolute discretion which items of services and support will be selected or not selected hereunder. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in, the Marketing & Promotion Program

All marketing support provided by Cox under the Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

The Marketing support will be offered by Cox not to exceed \$100,000.00 for the first year which will begin January 2001 and will continue that support until 2005, not to exceed \$250,000.00, per the following schedule:

~~2001 - \$100,000.00
2002 - \$ 75,000.00
2003 - \$ 50,000.00
2004 - \$ 10,000.00
2005 - \$ 10,000.00
2006 - \$ 5,000.00
2007 - \$ 5,000.00
2008 - \$ 5,000.00~~

~~* All monies listed will be in kind.~~

Marketing Support will be in combination of several advertising/marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Surprise Farms Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.

- One* *annually*
- 2) A minimum of *one* ~~two months~~ advertising for 2001, and *annually* one month of advertising for 2002 and 2003, in a local homebuilder/developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
 - 3) Assist in establishing a partnership with Cable Rep, a division of Cox Communication, and Master Developer to receive discount cross channel promotional advertising highlighting Surprise Farms Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
 - 4) Participation in any future "Cox Digital Community" media campaigns ~~that occur by 2001 or 2002. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Surprise Farms Community, wherein Cox will take every opportunity to promote the Master Developer/Builder/Cox Partnership, highlighting Surprise Farms.~~
 - 5) Support of any Grand Opening activities highlighting the Surprise Farms Community. Cox participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Surprise Farms that will reference Surprise Farms partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;
 - (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
 - (e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;
 - (f) provide prospective buyers with the most current information and promotional brochures and materials;
 - (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
 - (h) seek to include Cox's subscription agreement for video and data and description of all services in each escrow package and/or New Homeowners welcome folders;
 - (i) include Cox's name and a brief description of Cox's services a Cox digital logo, in all applicable written, oral and electronic advertisements of Surprise Farms or any phase thereof, whenever such advertisements describe the technology aspects of the amenities or services;

- (j) co-promote the parties on respective web pages;
- (k) when available promote use of the Cox@Home demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Surprise or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;
- (m) encourage all parties directly associated with the sale of SFR's to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;
 - (3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Surprise Farms, SFR's being developed and Technology Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings.
- 6) Cox shall bear the responsibility of providing a web-site specifically for Master Developer for the purposes of conveying information to residents and potential residents of Surprise Farms. The web site company will be determined by Cox. The content of the web site will be provided when Master Developer and Cox have mutually agreed upon the content. Master Developer and Cox will cooperate with the parameters established by the web company.

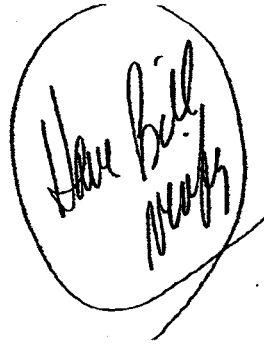
Any money derived from the ability to market on the web site will be applied to the monies Cox will provide to Master Developer for marketing.

(a) Cox will employ a web site company for the purpose of maintaining the web site described above (6.) for one year. The maintenance will begin on the first day of the thirteenth month from the initiation of the original web site.

EXHIBIT D

CATV/Data Service

Pre-Wire Specifications



Surprise Farms Residential Pre-Wiring Guidelines

INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6).

CABLE TV & HIGH SPEED DATA WIRING

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

Hex Crimp or radial compression 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.

Twist-on and reusable type F connectors are not appropriate, as they will create problems for digital video services, disrupting the over all network or causing signal leakage in violation of FCC rules. Thus, push-on, crimp or radial compression connectors must be used.

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(1), 76.802).

EXHIBIT E

Technology & Service Standards



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

(a) Franchise or license requirements imposed by Surprise 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

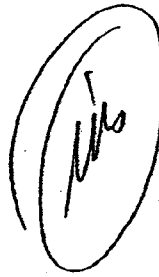
(e) Data Network Standards.

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

EXHIBIT F
Insurance Requirements

[to come]



DEAL POINTS FOR AGREEMENT WITH SURPRISE FARMS:

Term - the Initial Term of this CMA shall be for a period of 25 years, commencing on the Agreement date (March 29th, 2001). At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to the expiration of the Initial Term (or the renewal term then in effect, as applicable). The initial term and any renewal term are subject to early termination as provided in Sections 10 and 11 of this CMA.

Marketing Incentive Fee. Cox shall pay to Master Developer a Marketing Incentive Fee during the Term of this CMA, as set forth in subsection (d); provided no Marketing Incentive Fee shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Incentive Fees accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

W. J. [Signature]
(d) Calculation and Payment of Marketing Incentive Fee. As consideration for Master Developer's endorsement of Cox as the preferred provider of Technology Services to Surprise Farms and Master Developer's other obligations provided for in this CMA, Cox shall pay to Master Developer by certified check or other immediately available funds, no later than 100 days following the end of each calendar quarter during the Term of this CMA, commencing following the calendar quarter during which the first SFR is occupied, a Marketing Incentive Fee for Services Revenues generated from Technology Services provided by Cox to Surprise Farms. "Services Revenues" means all gross revenues actually collected by Cox on account of Technology Services provided to SFR's within Surprise Farms, exclusive only of pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereafter shall not be deducted in determining "Services Revenues" under this CMA. The Marketing Incentive Fee is determined based on the penetration rate of Cable Television, Local Telephone and Data Services under the Payment Schedules set forth below in this subsection (d). A separate Payment Schedule applies to Services Revenue collected for each of Cable Television, Local Telephone and Data Services; as a result, Cox shall keep and maintain a separate accounting of its penetration rate for, and Services Revenues collected by Cox on account of, Cable Television, Local Telephone and Data Services.

PAYMENT SCHEDULES

Cable Television Penetration Rate*	Percentage of collected Services Revenue from Cable Television to be paid to Master Developer
30% to 39%	3%
40% to 49%	4%
50% to 59%	5%
60% to 69%	6%
70% to 79%	7%
80% to 89%	8%
90%-100%	9%

Local Telephone Penetration Rate*	Percentage of collected Services Revenue from Local Telephone to be paid to Master Developer
30% to 39%	3%
40% to 49%	4%
50% to 59%	5%
60% to 69%	6%
70% to 79%	7%
80% to 89%	8%
90%-100%	9%

Data Services Penetration Rate*	Percentage of collected Services Revenue from Data Services to be paid to Master Developer
30% to 39%	3%
40% to 59%	5%
60% to 79%	7%
80% to 100%	10%

* Penetration rates will be based on Technology Services provided to SFR's built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made.

Exclusive Marketing Rights- Master Developer shall endorse Cox exclusively as the preferred provider of Technology Services to Surprise Farms. See page 10.

Discount on Cable and Data- All residents of Surprise Farms shall receive a 5% discount (from the prevailing retail rate) on all Cable Television and Data Services provided by Cox. This discount will be offered to the initial owner of a newly constructed residence. See page 10.

*offer bulk
options*

Comp Services- Each builder will receive comp service for digital television and data in one model home. The hardware will be provided by the builder. Appropriate recognition of the benefit provided Cox by way of reasonable visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement by Cox and each builder). See page 10.

Penalty for Failure to Provide Model Home Services- Cox shall remit to Master Developer a payment of Five Hundred Dollars (\$500.00) for each day that a model home is not ready to receive the Technology Services and Cox fails to provide any or all of such technology services to any such model home. See page 10.

Surprise Farms Website- If requested by Master Developer upon 120 days prior written notice to Cox, Cox shall include in Cox@Home or Cox@Work a home page shell for Surprise Farms homeowners designed by Master Developer (or its assigns) and its content subject to the mutual approval for both parties. See page 11.

TC-11

From: Arthurs, Tisha (CCI-Phoenix)
Sent: 10/4/2002 11:04:15 AM (Eastern Time)
To: Kelley, Mary (CCI-Phoenix)
CC: Drake, Paul (CCI-Phoenix)
Attachments: Paul Drake Vistancia.doc
Subject: FW: Vistancia Agreement

Please include me in any correspondence regarding this project.
Thank you

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

-----Original Message-----

From: Drake, Paul (CCI-Phoenix)
Sent: Friday, October 04, 2002 8:51 AM
To: Arthurs, Tisha (CCI-Phoenix)
Subject: FW: Vistancia Agreement

Paul Drake
Director, New Business Development
Cox Communications
(623) 322-7802

-----Original Message-----

From: Kelley, Mary (CCI-Phoenix)
Sent: Friday, October 04, 2002 8:37 AM
To: Drake, Paul (CCI-Phoenix)
Subject: Vistancia Agreement

Hi Paul,
As we discussed, here is the Vistancia agreement. I am sending it by e-mail so that it can be red-lined by Shea. Once Shea red-lines the agreement, please forward it to me so that I can have legal review any changes. Let me know if you have any questions. Thanks.

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

C03147

{ EMBED Word.Picture.8 }

MASTER PROPERTY ACCESS AGREEMENT

THIS MASTER PROPERTY ACCESS AGREEMENT ("Agreement"), is made and entered into this _____ day of _____, 2002 ("Effective Date") by and between CoxCom, Inc., d/b/a Cox Communications Phoenix, a Delaware corporation having an office at 1400 Lake Hearn Drive, N.E., Atlanta, Georgia, 30319 ("Cox") and Shea Homes & Sunbelt Holdings Pleasant Point, LLC, an Arizona Limited Liability Company having an office at _____, Phoenix, Arizona ("Shea"); collectively hereinafter Cox and Shea being referred to herein as the "Parties".

WHEREAS, Cox itself, and through its Affiliates is licensed to provide Communication Services including voice, video, web hosting, and data/internet services to residential and business customers in the greater Phoenix Area; and

WHEREAS, Shea owns land known as the Vistancia Development consisting of commercial, office and residential properties; and

WHEREAS, the Parties desire to enter into this Agreement to grant Cox access to the Development to install its equipment and facilities to provide the Communication Services to Tenants therein and to provide certain compensation to Shea under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties mutually agree as follows:

{tc V0 "11. Definitions"}1. Definitions.

Unless otherwise indicated, capitalized terms shall have the meaning ascribed below, and all other terms shall have the meaning commonly ascribed to them in the telecommunications industry. Wherever from the context it appears appropriate, each defined term stated in either the singular or plural shall include the singular and plural.

(a) Affiliate shall mean a person, association, partnership, corporation or joint-stock company or trust that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a Party to this Agreement.

(b) Building shall mean any Shea Building or any Third Party Building.

(c) Communications Services shall mean (i) telephone services including local, long distance and international services and IP telephone services (when available); (ii) video services, including digital, premium and video on demand services; (iii) Internet/Data and related communication services, including web hosting and/or web conferencing services.

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{FILENAME} 1
Confidential

Page {PAGE}

{DATE}

C03148

(d) Cox Backbone Conduit shall mean telecommunications conduit, and pull boxes and vaults serving such conduit, owned or installed by Shea or Cox, and which is located along the boundary of public streets within Rights-of-Way and along the boundary of public streets within the Development. Cox Backbone Conduit shall not include any Cox Building Conduit (as defined herein).

(e) Cox Building Conduit shall mean all telecommunications conduit which is owned and installed by Shea or Cox, which is located upon a Property to which Cox is providing Communications Services, and which connects a Building or other structure with the Cox Backbone Conduit or with other telecommunications facilities located within the Right-Of-Way abutting the Property upon which the Cox Building Conduit is located.

(f) Cox Network shall mean telecommunications facilities which are the property of Cox and which are used to provide Communications Services (or other services which may in the future be provided by Cox) in the Franchise Area, and shall include the Electronic Equipment and Fiber/Cable as defined in this Agreement.

(g) Electronic Equipment shall mean that portion of the Cox Network consisting of telecommunications signal interface and communications equipment including, but not limited to, optical-to-electrical conversion equipment, muxing equipment, equipment cabinets, fiber/T1 interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, and other electrical equipment to provision Communications Services installed by Cox (i) within the Cox Backbone Conduit or (ii) within Buildings.

(h) FCC shall mean the Federal Communications Commission.

(i) Fiber/Cable shall mean that portion of the Cox Network consisting of telecommunications signal transmission fiber, copper, coaxial cable or other cabling installed by Cox in (i) the Cox Backbone Conduit; (ii) Cox Building Conduit located on Properties owned by Shea; or (iv) within Buildings.

(j) Franchise Area shall mean that geographical area where Cox or its Affiliates are licensed by the FCC and/or PUC to provide Communications Service commonly known as Phoenix, Arizona. The Franchise Area is more particularly described as that geographical area bounded by _____ to the north, _____ to the south, _____ the west, and _____ to the east. Cox reserves the right to modify the Franchise Area during the Term of this Agreement.

(k) Shea Buildings shall mean those buildings owned and operated by Shea which are located upon the Properties and to which Cox shall provide Communications

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Field Result Changed

Services pursuant to this Agreement. Additional Shea Buildings may be added to this Agreement by written notice from Shea from time to time.

(l) **Monthly Recurring Revenue or MRC** shall mean all revenues received by Cox (or by their successors and assigns) for the transmission or distribution of the Communications Services through the Cox Network located within the Development including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to Tenant, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

(m) **Property or Properties** shall mean those parcels of real property owned by Shea upon which the Shea Buildings are located.

(n) **Property Licenses** shall mean collectively the separate agreements to be entered into with regard to each Shea Building or each Property (in which case a Property License may cover more than one Shea Building) pursuant to the terms of this Agreement in substantially the form attached hereto as Exhibit C.

(o) **PUC** shall mean the Arizona Corporation Commission.

(p) **Rights-Of-Way** shall mean that property owned or controlled by governmental authorities and used for the placement of utilities, road improvements, sidewalk and parkway and other governmental infrastructure.

(q) **State-of-the-Art** shall mean the most technologically advanced Communications Services generally offered by Cox to commercial customers in a significant number of its service markets in the continental United States but not including services offered strictly on a test market basis to a limited number of its service markets.

(r) **Tenants** shall mean the occupants and/or lessees of Shea at one or more of the Shea Buildings.

(s) **Third Party Buildings** shall mean all buildings and structures to which Cox provides Communications Services and which are not owned by Shea and which are located within the Development.

(t) **Third Party Provider** shall mean any telecommunications carriers providing telecommunications services in the Franchise Area through the purchase or lease from Cox of portions of the Cox Network serving Shea Buildings or Third Party Buildings.

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2. **Scope of Agreement.** The Agreement will cover the approximate property known as the Vistancia Development located in the greater Phoenix, Arizona area ("Development"). Cox will provide Communication Services to Tenants located in Buildings owned by Shea or third parties situated within the Development. The Communication Services will be delivered to Tenants via the Cox Network which shall consist of a fiber/coax/copper network, including electronic equipment. Shea shall install conduit within the Development for use by Cox to install the Cox Network to reach Buildings. Shea shall also provide Cox with certain Marketing services as provided in this Agreement. Cox shall pay Shea a Percentage Fee based on the Monthly Recurring Charges ("MRC") received by Cox for the provision of Communication Service to Tenants located within Shea Buildings at the Development. Communication Services provided by Cox to Tenants of the Buildings shall be under a separate agreement between Cox and such Tenant and Shea shall have no obligation with respect to such Communication Services. Shea will install streets and public roads and other improvements including rights-of-ways ("Improvements") and will dedicate same to the City of _____.

10.12. Right of Use; Property Licenses 3. **Property Licenses.** For each Property within the Development to be served by Cox Communication Services, the parties shall enter into a Property License in substantially the form attached hereto as Exhibit C. The Property License shall describe the specific location, description and size of the Property which is the subject of such license. Cox shall use best reasonable and commercial efforts to execute Property Licenses for all of the Properties upon request of Shea after the Effective Date of this Agreement. Each Property License shall become effective and become part of this Agreement upon its execution by both Cox and Shea. Cox shall have no obligation to enter into any Property License with respect to any Property and/or Building thereon unless Shea has provided the Improvements, including the Cox Backbone and Cox Building Conduits required to serve such Property with the Cox Network. Furthermore, payment of Percentage Fees with respect to any Property shall be conditioned upon Shea owning such Property and/or Building at the time of the execution of the Property License. Property Licenses shall terminate upon the earlier of (i) the transfer, sale or conveyance of the Shea Building or Property to a Third Party Building owner or Third Party Property owner as provided in Section 28.5; or (ii) upon the expiration or termination of this Agreement.

10.13. Use 4. **Improvements.** During the Term of this Agreement, Shea shall make, or cause to be made, or established certain non-exclusive public utility easements, plats, streets, and other Rights of Way within the Development ("Improvements"). The location and type of all Improvements shall be solely as determined by Shea provided that Shea shall install and provide for Cox the Cox Backbone Conduit as set forth in Section 10 of this Agreement. The Cox Backbone Conduit shall be installed by Shea contemporaneously with all Improvements during the Term of this Agreement and Shea shall provide the Cox Building Conduit with respect to any Shea Building erected or placed on within the Development. Notwithstanding the placement of Cox Backbone Conduit by Shea, Cox shall have the right, but not the obligation, to place additional conduits and other equipment within the _____

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Rights of Way in accordance with Cox's Franchise Agreement with the City of _____ or such other governmental authority having jurisdiction over the Rights of Way within the Development. Further, Cox may obtain from third parties including other telecommunication carriers or utilities facilities or easements or other rights to place Cox conduits, fiber, cables and/or equipment on property or facilities owned or controlled by such third party carriers or utilities.

5. Communication Services.

5.1 Cox Services. Cox shall use its best commercial efforts to provide Communications Services promptly to any Tenants of any Shea Building who desires to subscribe to such services provided that such Tenant Building is served by Cox Backbone and Cox Building Conduit and the Network Room, MPOE, risers, and Internal Wiring (hereafter defined) are of sufficient capacity and available for Cox to serve such Tenant. Communications Services will be State-of-the-Art and provided in compliance with the rules and regulations of the Arizona Corporation Commission, the FCC and the local franchising authorities. The Communications Services provided by Cox shall be at the rates Cox and its Affiliates lawfully establishes from time-to-time. Cox retains the right to control, add to, delete and/or change the Communications Services, provided that the Services shall be State-of-the-Art. Charges for Communications Services shall be due and payable by Tenant pursuant to a separate agreement executed by Cox and each Tenant subscribing to service, and Cox shall look solely to Tenants, and not to Shea, for the payment of Communications Services unless such services are provided to Shea under a separate agreement between Cox and Shea. The Parties acknowledge that certain Communication Services are subject to regulatory authority by the Arizona Corporation Commission and that such services in Arizona are provided by Cox Arizona Telcom, LLC, a wholly-owned subsidiary of Cox, and that such Affiliate or its successor, shall deliver regulated Communication Services to Tenants within the Development. The Communication Services provided by Cox Arizona Telcom, LLC shall be included in the calculation of MRC and the payment of the Percentage Fee to Shea.

5.2 Other Providers. This Agreement is non-exclusive. Shea may enter into similar agreements to this Agreement with third parties to allow such third parties to offer services similar to the Communication Services to Tenants of the Development, provided, however, that Shea shall not authorize nor permit such third parties to use the Cox Backbone Conduit, the Cox Building Conduit, or the Cox Network (including Internal Wiring being used by Cox) to deliver such third parties' services.

5.3 Bulk Communication Services. The Parties acknowledge that they may, but are under no obligation to, enter into a separate agreement for the provision of Bulk Services ("Bulk Services Agreement") to certain MDU locations within the Development. For purpose of this Agreement, MDU shall mean such residential Building containing multiple dwelling units for lease or rent as personal residences and not as offices. Bulk Communication Services shall mean video or Internet services offered by Cox to the owner or manager of the MDU for redistribution within the MDU location for the benefit of the residents located therein. If Cox and Shea enter into a Bulk Services

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Agreement with respect to an MDU Building within the Development, the obligations of the parties with respect to such MDU location shall be governed the terms and conditions contained in the Bulk Services Agreement and not by this Agreement; provided, however, that Cox may use the Cox Backbone Conduit and the Cox Building Conduit to provision services to the MDU. In no event shall Cox be obligated to pay Percentage Fees as set forth in this Agreement with respect to the provision of video or Internet services, or other telecommunication services to the MDU.

{tc V0 "14. Term"}6. **Term.** Unless terminated sooner as provided in this Agreement, this Agreement shall be for a term of fifteen (15) years from the Effective Date ("Initial Term"). Thereafter, this Agreement shall automatically renew on the same terms and conditions for one (1) year extension terms ("Renewal Term(s)") unless Cox or Shea provide the other party one hundred-eight (180) days prior written notice of its intent to terminate the Agreement at the end of the then existing term. The Initial Term and the Renewal Terms collectively shall be referred to as the Term.

{tc V0 "15. Ownership and Installation of Telecommunications Facilities; Surrender"}7. **Ownership and Installation of Cox Network.**

7.1 **Title to Cox Network.** Unless otherwise expressly provided in this Agreement, or otherwise provided by state or federal statutes, laws, rules or regulations enacted after the date of this Agreement, all of the Cox Network installed by Cox shall remain the property of Cox at all times during and after the termination of this Agreement, shall not be considered fixtures of any Property or Shea Building and shall not be subject to any mortgage or deed of trust or other lien that encumbers any Property. Upon Cox's request, Shea shall execute, acknowledge and deliver to Cox an instrument in the form reasonably necessary to confirm Cox's sole title to the Cox Network.

7.2 **Exclusive Use.** During the Term of this Agreement, Cox shall have sole use of the Cox Network within the Development. Shea shall not have any rights in the Cox Network installed by Cox and, Shea, its employees, agents, or contractors shall not use or interfere with or connect any equipment to, the Cox Network installed by Cox.

7.3 **Installations.** All installations of the Cox Network within any Shea Building, including without limitation, the installation of Fiber/Cable to the MPOE, the installation of Fiber/Cable and/or Electronic Equipment within any existing Building riser system or within any equipment areas on any floor of any Building and/or the installation of any additional risers and the installation of Fiber/Cable therein shall be performed in a good and workmanlike manner in accordance with plans and specifications approved by Shea, which approval shall not be unreasonably withheld, conditioned or delayed.

7.4 **Fiber/Cable Ownership.** Upon the expiration or earlier termination of this Agreement, all Fiber/Cables installed by or on behalf of Cox within Cox Building Conduit and within any Shea Building shall be abandoned by Cox and the same shall become the property of Shea. Shea shall take ownership and possession of such Fiber/Cables "as is, where is, in place, and with all faults" and without any representations from Cox, except as to title, Fiber/Cable located within Cox Backbone

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Conduit shall remain the personal property of Cox following termination or expiration of this Agreement.

7.5 Electronic Equipment. Within one hundred-eighty (180) days following the expiration or earlier termination of this Agreement, Cox shall remove the Electronic Equipment from the applicable Property and the Shea Building(s). Any Electronic Equipment located therein and not removed within the foregoing period, (i) may be permitted to remain by Shea, in which case it shall become the personal property of Shea and Shea shall take ownership and possession of such Electronic Equipment "as is, where is, in place, and with all faults" and without any representations from Cox, except as to title; or (ii) may be removed by Shea at the expense of Cox. In either such case, Cox may disconnect service to such Electronic Equipment.

{tc U0 "16. Maintenance"}8. Maintenance. Cox shall, at its own expense, maintain the Cox Network in a first-class condition in accordance with all applicable codes, regulations, or laws. Cox shall not damage the Development, Improvements, Properties or Shea Buildings in the installation and maintenance of the Cox Network and shall be liable for any loss or destruction thereto resulting from the acts or omissions of Cox, its employees, agents or contractors, ordinary wear and tear excepted. Shea shall not damage the Cox Network installed within the Development, any Property or in any Shea Buildings and shall be liable for any loss or destruction thereto resulting from the acts or omissions of Shea, its employees, agents or contractors. Notwithstanding the foregoing, Shea shall not be responsible for any loss or destruction to the Cox Network resulting from the acts or omissions of any Tenant of any Property or any other party utilizing the MPOE or Network Room within a Building for its facilities. The foregoing shall not be construed to limit the rights of Cox to pursue an action against such Tenant or other party for damage caused to the Cox Network by such Tenant or other party.

{tc U0 "17. Right of Access"}9. Rights of Access.

9.1 Use. Cox shall use the Properties and the Development for the purpose of installing, maintaining, inspecting, operating, removing and/or relocating the Cox Network, including the POP Easement and POP Cabinet described in Section 11 of this Agreement, and as necessary to provide Communications Services to Tenants of Buildings within the Development. Furthermore, Cox and its authorized employees, agents, representatives, and contractors may access each Property and the Development from time to time for the purpose of marketing Communication Services to Tenants in Buildings located therein. Nothing in this Agreement shall be construed to restrict Cox rights to use streets and other Rights of Way within the Development where rights are granted to Cox by federal or state law, or the local Franchising Authority.

9.2 Access to Development. For the Term of this Agreement, Cox, its employees, agents and contractors, shall have a non-exclusive right of access in, over, across and upon the Properties and the Development as reasonably necessary for the delivery and marketing of Communications Services. Additionally, Cox, its employees, agents and contractors shall have access to the Development for the purpose of

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installation, relocation and reinstallation, maintenance, repair, upgrading, operation and removal of the Cox Network, including the installation of conduits. All physical construction, installation and alteration of the Cox Network within the Development or shall be subject to the prior written approval of Shea, which approval shall not be unreasonably withheld, conditioned or delayed. Cox will present the applicable plans and specifications for all Cox Network within the Development to Shea and Shea shall give Cox written notice of any objections within thirty (30) days of receipt of the such plans and specifications. Shea's failure to timely object to any such plans and specifications in writing shall constitute Shea's approval and consent. The foregoing notwithstanding, Cox shall not require consent or approval of Shea for construction, alteration, installation repair or maintenance operations with respect to the Cox Network that takes places within the Rights of Way or is pursuant to authority granted by the Franchising Authority.

9.3 Building Access. In Buildings owned by Shea, Cox shall have the right to offer its Communications Services to all Tenants with offices or premises in such Shea Building. The installation and operation of the Cox Network by Cox will meet all applicable FCC specifications and will be installed in a first-class and workmanlike manner consistent with Cox specifications. Cox shall have access to the Buildings Internal Wiring, the Network Room, the risers, laterals, and related telephone closets and plenums for Cox to install the Cox Network. In exercising such these rights, Cox shall not interfere with the rights of Tenants of any Property or Shea Building, nor install, relocate or reinstall any Cox Network within a Shea Building without prior to the approval of plans and specifications by Shea. Upon any removal of the Cox Network, from any Shea Building, Cox shall repair any damage resulting from such removal, ordinary wear and tear excepted. Except in emergency situations, access to Shea Buildings shall be during normal business hours. Any access to Shea Buildings shall be subject to such reasonable requirements as may be established from time to time by Shea. As to Shea Buildings leased to a single Tenant, or with respect to Third Party Buildings, Cox shall be responsible, and Shea shall have no responsibility, for entering into such arrangements with such Tenant or such Third Party Building owner as may be necessary to permit Cox the access to the telecommunications equipment room or other areas it requires from such Tenant or Third Party Building Owner.

9.4 Building Network Room. In each Shea Building, Shea shall provide a room the termination of the Cox Building Conduit and for access to the Buildings space where communication equipment and electronics are located ("Network Room"). Shea shall provide to Cox space in the telecommunications equipment room of each Building which shall be a minimum size of seventy (70) square feet of floor space for Cox to install portions of the Cox Network required to provide Communication Service for the applicable Building. Owner shall supply commercial quality doors and locks to limit access to the Network Room by unauthorized individuals. If for any reason there is not adequate space in the Network Room of any Building, the cost of configuring, constructing or otherwise modifying such Building Network Room location shall be borne by Shea. Within the Network Rooms of each Shea Building in which Cox is providing Communications Service, Shea shall provide Cox with one dedicated electrical connection with 120-volt single phase, thirty (30)-amp capacity at a location to be

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designated by Cox ("Dedicated Connection"). If such Dedicated Connection is not available within the Network Room for Cox's use, then Shea shall reimburse Cox or its electrician, the documented commercially reasonable cost of providing the electrical connection. Power consumption for such Dedicated Connection shall be provided at no charge to Cox. Owner shall supply sufficient air conditioning and climate control for the normal operation of the Electronic Equipment located within the Network Room.

{c V0 "18. Conduit"}10. Conduit. As a material consideration for Cox entering into this Agreement, Shea has agreed to install both Cox Backbone Conduit and Cox Building Conduit and other related equipment within the Development including the Properties. The Parties shall coordinate the placement of conduit with respect to the Improvements and into Shea Buildings. Coordination will benefit the Parties and may allow Cox to offer enhanced Communication Services such as SONET services which may only be available to Tenants in Shea Buildings with dual or diverse entrance facilities and Network Rooms. Shea shall coordinate with APS and other utilities in the installation of the conduits. These conduits will be used by Cox to place its Fiber/Cable which is required to provide Communication Services to Tenants located in Buildings on each Property within the Development. Cox shall provide Shea with conduit specifications and installation instructions which are set forth in Exhibit A. Shea shall provide Cox with conduit maps identifying the location of the conduits throughout the Development from time to time during the Term of this Agreement. Cox has the right, but not the obligation, to install conduits in the Rights of Way and on properties that are Third Party Properties. If Shea fails to install Cox Backbone Conduit and Cox Building Conduit with respect to an Shea Building, Cox shall have no obligation to make Percentage Fee payments with respect to Communication Services provided to such Tenants.

10.1 Cox Backbone Conduit. Shea will, during the Term of the Agreement when making Improvements to the Development, install two (2) four inch telecommunications conduits which shall run along all of the streets and Rights of Way within the Development and these conduits shall be the Cox Backbone Conduit. As part of the Cox Backbone Conduit, Cox will require manholes or vaults approximately every 1,000 linear feet and vaults at every Building within the Development. Cox shall be responsible for the installation of vaults or manholes within the Rights of Way and Shea shall be responsible for the installation of manholes or vaults located within each Property. Cox will provide specifications for the manholes and related vaults. Upon installation of the Cox Backbone Conduit, title to such conduit shall pass to Cox, and shall, at all times during and after the expiration or earlier termination of this Agreement, remain the personal property of Cox. Once the Improvement is completed within the Rights of Way, risk of loss of the Cox Backbone Conduit shall at all times remain with Cox, except to the extent of any damage caused by the acts or omissions of Shea, its employees, agents or contractors. Cox shall be responsible for the maintenance or repair of any Cox Backbone Conduit and Cox shall have exclusive use of the Cox Backbone Conduit.

10.2 Cox Building Conduit. For each Building that Shea erects or authorizes to be placed within the Development during the Term of this Agreement, Shea shall place:

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or cause to be placed, two (2) four inch conduits connecting the Cox Backbone Conduit to the applicable Building and such conduit shall be sufficient to reach the Building's Network Room. Shea shall provide foundation sleeves and connections as set forth in Exhibit A, Section II, for connecting the Network Room and the Cox Building Conduit. During the Term of this Agreement, Cox shall be responsible for the maintenance and repair of the Cox Building Conduit. Except as otherwise provided in this Agreement, during the Term of this Agreement, title to and risk of loss to the Cox Building Conduit shall at all times remain with Cox, except to the extent of any damage caused by the acts or omissions of Shea, its employees, agents or contractors. At the expiration or earlier termination of this Agreement, title to and risk of loss to the Cox Building Conduit installed upon any Property shall pass to Shea; provided, however, that for such Third Party Buildings subject to sale, transfer or conveyance under Section 28.5 of this Agreement, Cox shall retain title to such Cox Building Conduit located on such Property. Cox shall have exclusive use of the Cox Building Conduit.

{c 10 "110. POP Easements"}11. **POP Easements.** Shea shall provide Cox with two (2) locations within the Development for Cox to place 12 foot by 24 foot by 5 foot high cabinets ("POP Cabinet") which shall contain Cox Electronic Equipment. The POP Cabinet may be located in the rights-of-way or at such other location as mutually agreed by the parties but if the location is on Property owned by Shea, then Shea shall provide Cox with a perpetual easement which shall run with the land ("POP Easement"), and shall be evidenced by a recordable instrument in substantially the form attached hereto as Exhibit E. Cox shall provide Shea with plans and specifications for any POP Easement, which plans and specifications shall be subject to the approval of Shea, which approval shall not be unreasonably withheld, delayed or conditioned. Shea shall have the right to require that any POP Cabinet installed within any POP Easement be appropriately screened or enclosed. Title to the POP Cabinet and the Electronic Equipment therein shall at all times during the Term of this Agreement, and following expiration or termination of this Agreement, remain with Cox. The POP Easement shall be provided at no charge to Cox.

{c 10 "112. Payment Obligations"}12. **Payment Obligations.** In consideration for the marketing assistance and the construction of the Cox Backbone Conduit, the Cox Building Conduit and the performance of its obligations under this Agreement, Cox shall pay Shea a Percentage Fee as set forth below. Cox shall pay Shea the Percentage Fee on the MRC received by Cox from Tenants in Shea Buildings within the Development on the following scale based on combined penetration of all Shea Buildings within the Development. The Percentage Rate shall be calculated by a fraction the numerator of which is the number of Tenants within Shea Buildings in the Development obtaining at least one or more Communication Services from Cox and the denominator of which is the total number of Tenants within Shea Buildings in the Development and multiplying such result by 100.

<u>Penetration Rate</u>	<u>Applicable Percentage Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC

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86% - 95%
96% - 100%

4% of MRC
5% of MRC

12.1 Payments. All payments of the Percentage Fees shall be payable to the Shea without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Shea may designate. Payments of Percentage Fees shall be made within thirty (30) days of the first day of each January, April, July, and October during the Term of this Agreement for the Percentage Fees due for the prior quarter. On the final day of each of quarter, Shea shall disclose to Cox the number of Tenants in Shea Buildings within the Development ("Shea Tenants"). Within ten (10) days of receipt of the number of Shea Tenants, Cox shall calculate the Percentage Fee due Shea, if any, and make such payment within thirty (30) days of the end of the applicable quarter; provided, however, Cox shall have no obligation to make payments of Percentage Fee for the applicable quarter if Shea fails to deliver to Cox the number of Shea Tenants. If Cox fails to make payments as required herein, Shea shall be entitled to interest at the rate of 1% per month until paid.

12.2 Excluded MRC. In addition to the exclusion Bulk Communication Services as provided in Section 5.3 of this Agreement from the calculation of Percentage Fee payments, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Shea.

{c: 10 "113. Resale or Lease of Communications Services"}13. Resale or Lease of Communications Services. The Parties acknowledge that Cox may elect, or be required by federal or state law, to lease or allow use of, portions of the Cox Network to Third Party Providers to allow such providers to provision telecommunications services via the Cox Network to Tenants in Shea Buildings or Third Party Buildings. In no event shall the compensation received by Cox from such Third Party Providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing Third Party Providers to deliver telecommunication services or communication signals via the Cox Network shall not be deemed an assignment, sale or transfer of the Cox Network or a delegation or assignment of Cox's rights under Section 28 of this Agreement.

{c: 10 "115. Marketing Communications Services"}14. Marketing Communications Services. Shea will use reasonable efforts to represent, promote to Tenants the Cox Communication Services in all Buildings within the Development ("Shea Marketing"). Shea Marketing shall consist of (i) Shea including certain Cox provided marketing materials in leasing offices, Tenant lease kits, Development marketing kits; (ii) placement of the "Cox Business Services" logo and description of telecommunications services on Shea's web sites promoting and/or advertising the Development; and (iii) provision of Tenant lists including name, address and telephone number of such Tenant for the purpose of Cox marketing Communication Services to Tenants. In addition, Shea shall allow Cox to place signage in the leasing offices of

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Shea within the Development. This signage may consist of wall mounted display, table-top display or casel display. All marketing and sales activity shall be conducted in a professional manner. Cox shall be entitled to sponsor and host one promotional event per calendar year for each Building. Shea shall have no obligation to describe, market, or promote the Communication Services except as described in this Section. Cox shall submit all materials which make reference to Shea or the Development, and all materials which Cox desires to post or display on or within any Building, to Shea for prior approval. Shea shall have the right to reject any proposed posting or other display on or within any Building in Shea's reasonable discretion.

{c 10 "116. Property Taxes"}15. Property Taxes. During the Term and any extension hereof, Cox shall be responsible for the declaration and payment of any applicable taxes or governmental assessments levied on the Cox Network owned by Cox located on any applicable Property, Improvements, or in any applicable Shea Building. Cox shall also be responsible for the applicable taxes on Cox Backbone Conduit and the Cox Building Conduit; provided, however, that when an applicable Property License terminates, Cox shall be responsible for the Cox Building Conduit taxes only with respect to conduit for which it retains title. Shea shall be responsible for payment of any personal property or real property taxes assessed against the Property, an Shea Building and the Development.

{c 10 "117. Termination"}16. Termination.

Unless terminated sooner as provided herein, either party may terminate this Agreement in the event of a Default by the other Party as provided herein.

16.1 Cox Default. Cox shall be in default under this Agreement in the event that: (i) Cox fails to make payment of Percentage Fees as required under this Agreement, or to pay any other monetary sum payable under this Agreement, where such failure continues for a period of twenty (20) days after written notice thereof is provided by Shea to Cox, or (ii) Cox fails to perform or observe any of the material conditions or agreements to be performed or observed by it hereunder, and such failure is not cured within thirty (30) days after receipt of written notice from Shea, provided, that if the cure cannot be effected within thirty (30) days but Cox commences good faith actions to cure within that period and pursues such cure to completion, then Cox shall have such additional time period, not to exceed ninety (90) days, as shall be reasonably necessary to diligently effect a complete cure. In the event of a default by Cox as set forth above, Shea, in addition to any other rights or remedies at law or equity it may have, shall have the right to immediately terminate this Agreement. Upon termination due to Default by Cox, the Cox Backbone Conduit shall nevertheless remain the personal property of Cox, provided, however, that Shea shall be entitled to a claim for the estimated installation of costs of such Cox Backbone Conduit.

16.2 Shea Default. Shea shall be in default under this Agreement in the event that: (i) Shea fails to perform or observe any of the material conditions or agreements to be performed or observed by it hereunder, and such failure is not cured within thirty (30) days after receipt of written notice from Cox, provided that if the cure cannot be effected

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within thirty (30) days but Shea commences good faith actions to cure within that period and pursues such cure to completion, then Shea shall have such additional time period, not to exceed ninety (90) days, as shall be reasonably necessary to diligently effect a complete cure. In the event of a default by Shea as set forth above, Cox, in addition to any other rights or remedies at law or equity it may have, shall have the right to immediately terminate this Agreement.

16.3 Property License Default. The Parties acknowledge that several Property Licenses may be entered into between the Parties pursuant to this Agreement and it is the intention of the Parties to limit any Default under a Property License to the Property License at issue if the Default is reasonably capable of being so limited.

16.4 Regulation. The Parties acknowledge that Cox may be required to obtain or expand its Franchise Agreement from the City of _____, Arizona ("Franchise Authority") and that the provision of certain Communication Services may be subject to Cox obtaining rights under this Franchise Agreement. Furthermore, Cox may terminate the provision of Communication Services under this Agreement in the event Cox is unable to continue the distribution of Communication Services because of any law, rule, regulation or judgment of any court, or if the applicable Franchise Agreement is terminated, surrendered or revoked for any reason. If Cox is required to terminate under this Section 16.4, such termination shall be without further liability to Shea except for the payment Percentage Fees accrued to the date of termination.

{tc VO "118. Building Internal Wiring"}17. **Building Internal Wiring.**

17.1 Minimum Point of Entry. Cox shall install the Cox Network up to the Minimum Point of Entry ("MPOE") in each Building. For the purpose of telephone service, the MPOE shall be the "66 punch-down block" or similar device located in the Network Room in each Shea Building. For cable television and internet/data service (to the extent provided by co-axial Fiber/Cable and not through fiber-based services or the shared copper riser system), the MPOE shall be that point approximately twelve (12) inches from the Tenant's electronic network interface equipment. The foregoing notwithstanding, for Communications Services delivered through fiber-based products, the MPOE may extend to the Tenant's location.

17.2 Building Wiring. Shea represents that it is the owner, or authorized agent, of Shea Building Internal Wiring. For purpose of this Agreement, Internal Wiring shall mean such wiring installed by Shea, its employees, agents or contractors from the Network Room throughout the Building to each Tenant location. Shea shall allow Cox to cross-connect its Cox Network to the Building Internal Wiring in the Network Room or at a point within the Building as reasonably requested by Cox, or at the point otherwise provided for the cross-connection for other communications services providers within such Building. Use of Shea Internal Wiring shall be provided at no charge to Cox. Nothing in this Agreement shall preclude Cox from extending its Fiber/Cables to the Tenant space in Shea Buildings as reasonably necessary to provide Communications Services, provided that Cox shall be responsible for all costs incurred in the installation

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of its Fiber/Cables, including the cost of coring additional risers to accommodate the Cox Network. Cox shall have non-exclusive rights to use the Internal Wiring for the provision of Services to Tenants provided, however, that Shea shall not authorize third parties to use the Internal Wiring used by Cox to deliver Communication Services. The Parties will mutually benefit if Shea installs Internal Wiring which meets Cox's specifications and is compatible with Cox's State-Of-The-Art Services. Accordingly, Cox will provide Shea with Internal Wiring specifications for use with Internal Wiring installation from time to time during the Term of this Agreement. Cox shall have no obligation to maintain or repair the Internal Wiring unless same is damaged by Cox, its employees, agents or contractors.

(c) 119. Confidentiality"; 18. Confidentiality and Audit Rights.

18.1 Confidentiality. Except as set forth below, the contents of this Agreement, information, documents, negotiations, discussions or other matters relative to the Agreement, the Property Licenses, and any other related arrangements shall be deemed confidential (the "Confidential Information"). Regardless of whether a transaction between the parties is consummated, each party that receives Confidential Information (the "Receiving Party") directly or indirectly from the other party (the "Disclosing Party") agrees to maintain the confidentiality of all such Confidential Information, and shall not release, publish, reveal or disclose, directly or indirectly, such Confidential Information received directly or indirectly from the Disclosing Party to any other person, entity or group, without the prior written consent of the Disclosing Party. The following shall not constitute Confidential Information: (a) information that the Disclosing Party approves in writing to be disclosed, (b) information that the Receiving Party received from a third party not under an obligation to keep it confidential, or (c) information that has entered the public domain by means other than an authorized disclosure by the Receiving Party. A Receiving Party may disclose Confidential Information received from a Disclosing Party to the Receiving Party's attorneys, accountants and other professional advisors, provided that all such persons are required to maintain such Confidential Information in confidence at all times thereafter. Confidential Information shall specifically include any Customer Proprietary Network Information ("CPNI"), or other information about Tenant's use, purchase, or selection of Communications Services from Cox.

18.2 Audit Rights. Shea shall have the right, upon not less than thirty (30) days advance written notice to Cox, to audit Cox books and records to verify payment of Percentage Fees under this Agreement. Audits may be conducted at any time after the first year of the Initial Term and for a period of up to two (2) years after expiration or earlier termination of this Agreement; provided, however, that: (i) Shea may not perform more than one audit in any twelve (12) month period; (ii) Shea shall only have the right to audit the amounts payable for any calendar year for a period of three (3) years following the payment of Percentage Fees. All such audits shall be conducted at Cox offices in Phoenix, Arizona where such books and records are maintained, or at such other locations in Phoenix as may be reasonably specified by Cox, and during normal business hours. Mechanical reproduction, copying or removal of the books, records, or

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Shea shall refund the overpayment to Cox within thirty (30) days after such notice, together with interest on the amount of the shortfall at the rate of one (1) percent per month from the date the Percentage Fee overpayment was paid to the date of repayment of the same. Upon expiration of the one hundred twenty (120) day period set forth above, provided the audit did not reveal an overpayment, Cox and/or its auditors shall return any and all documents, including copies thereof, removed from the audit location as part of the audit process. If there is an overpayment, such documents shall be returned when the shortfall has been paid by Shea or otherwise resolved as provided herein.

{tc \10 "120. Condemnation or Casualty"}19. Condemnation or Casualty.

19.1 Casualty {tc ""}. If there is a casualty to any Shea Building, Improvement including the conduits, within which the Cox Network is located which casualty adversely affects Cox's ability to provide Communications Service, Shea may either within ninety (90) days of the casualty (i) repair or restore the Shea Building, Improvement or conduits, or the damaged portion thereof, or (ii) terminate the applicable Property License by giving written notice to Cox. If the casualty affects only Improvements or Cox Backbone Conduits, then Shea shall repair same at its expense and Cox shall reinstall the Cox Network therein at Cox's expense. If Shea elects to repair or restore such Building or the damaged portion thereof, upon completion of such repair or restoration, Cox shall, at its sole expense, reinstall the Cox Network within the Building provided that Shea shall install Cox Building Conduit at its expense, if same was damaged by the casualty.

19.2 Condemnation {tc ""}. If there is a condemnation, or a conveyance in lieu of condemnation, of a portion of a Property or Shea Building that materially and adversely affects Cox's ability to operate the Cox Network to provide Communications Service to such Property or Shea Building, then the Property License for such Property or Shea Building will terminate upon transfer of title to the condemning authority, without further liability to either party under this Agreement and Cox shall be entitled to pursue a separate condemnation award for the Cox Network, and the cost of relocating or removing same from the condemning authority. Notwithstanding the foregoing, Cox shall have no recourse whatsoever against Shea for such costs nor shall Cox have any right to share in any condemnation award or proceeds due Shea on account of such condemnation, or conveyance in lieu thereof, provided, however, that Cox may pursue its own award for the cost of relocating the Cox Network or loss thereof.

{tc \10 "121. Representations and Warranties"}20. Representations and Warranties.

20. Representations and Warranties.

20.1 By Shea. Shea represents and warrants to Cox as follows: (i) Shea is the owner of, or authorized to represent the owners of, the Development and the Shea Buildings; (ii) By entering into this Agreement with Cox, Shea shall not be in violation of any agreement it has with a third-party relating to the Development; (iii) Shea is a duly organized limited liability company organized in the State of Arizona and qualified and authorized to do business in the State of Arizona; and (iv) Shea shall obtain all governmental permits and licenses, zoning variances and other governmental approvals at

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Shea sole cost and expense required for performance of its obligations under this Agreement.

20.2 By Cox. Cox represents and warrants to Shea as follows: (i) Cox and its Affiliates providing Communication Services under this Agreement are authorized by the FCC and the PUC to provide the Communications Services within the Development and in the Franchise Area; (ii) By entering into this Agreement with Shea, Cox shall not be in violation of any agreement it has with a third-party relating to the Development; (iii) Cox and its Affiliates providing Communication Services to the Development are duly organized entities in the State of Delaware, qualified and authorized to do business in the State of Arizona; and (iv) Cox shall obtain all governmental permits and licenses, zoning variances and other governmental approvals at Cox sole cost and expense required for installation of the Cox Network and the provision of Communication Services within the Development.

{c V0 "122. Relocation of Telecommunications Facilities"}21.

Relocation. Shea, upon ninety (90) days written notice to Cox, may require in connection with the relocation or expansion of any Building or otherwise, that Cox relocate the Cox Network, including, without limitation, Electronic Equipment, Fiber/Cable and other facilities located within any Building or Network Room to other comparable space or location within an Shea Building or Property during the Term of this Agreement ("Building Relocation"). Shea may, following the notice provided in this Section 21, relocate, or expand any Improvements and the same may require Cox to remove, relocate and/or reinstall the Cox Network within such Improvement ("Improvement Relocation"). In the case of a Building Relocation or an Improvement Relocation, Shea shall be responsible for all reasonable costs incurred by Cox for relocating and reinstalling the Cox Network due to such Relocation.

{c V0 "123. Nondisturbance"}22. **Nondisturbance.** This Agreement

shall at all times be subject and subordinate to the lien of any ground lease or any mortgage or deed of trust or other security instrument that may now or hereafter be placed on any of the Properties or any Shea Building, and any and all renewals, extensions, modifications or replacements thereof; provided, that, so long as Cox is not in Default under this Agreement, this Agreement or any Property License entered into pursuant to this Agreement, shall not be terminated in the event of termination of any such ground lease, or the foreclosure of any such mortgage or deed of trust or other security instrument to which Cox has subordinated this Agreement pursuant to this Section. Cox shall also, upon written request of Shea, execute and deliver all instruments as may be required from time to time to subordinate the rights of Cox under this Agreement or any Property License entered into pursuant to this Agreement, to any ground lease or to the lien of any mortgage or deed of trust or other security instrument, provided, however, that such instrument shall include provisions in substance that so long as Cox is not in default under this Agreement, this Agreement or any Property License entered into pursuant to this Agreement, shall not be terminated in the event of termination of any such ground lease, or the foreclosure of any such mortgage or deed of trust or other security.

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{t: \0 "124. Force Majeure"}23. Force Majeure.

23.1 Force Majeure. In no event shall either party have any claim or right against the other party for any failure of performance by such other party if such failure of performance is caused by or the result of (i) causes beyond the reasonable control of such other party, including, but not limited to, third party cable cuts, acts of God, fire, flood, or other natural disaster; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over this Agreement; (iii) any civil or military action including national emergencies, acts of terrorists, riots, war, civil insurrections, or (iv) taking by condemnation or eminent domain of a party's facilities or equipment ("Force Majeure").

23.2 Force Majeure Liability. If a Force Majeure occurs during the Term of this Agreement, this Agreement shall remain in effect for a period of sixty (60) days from the date of the inception of such Force Majeure event, but the parties' performance and payment obligations under this Agreement shall be suspended for such sixty (60) day period. In the event the Force Majeure event continues for a period longer than sixty (60) days, either party may terminate this Agreement without incurring any liability to the other party except for payment and performance obligations accrued prior to the date of the inception of the Force Majeure event. If the Force Majeure event is capable of being limited to one or more Property or Building, then the termination rights and the Force Majeure rights hereunder shall apply only to such Property or Building.

{t: \0 "125. Insurance"}24. Insurance. Throughout the Term of this Agreement, each party shall maintain the following insurance coverages:

24.1 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 Five Million Dollars (\$5,000,000) per occurrence.

24.2 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.

24.3 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.

24.4 General Provisions. Each party shall name the other party (and such other individuals or entities as a party may reasonably request) as an additional insureds on the commercial general liability policy required to be maintained by such party, and shall

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provide an endorsement evidencing the same in form acceptable to the other party. 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.

{tc V0 "126. Notices"}25. **Notices.** Any consent, election or notice required or permitted to be given under this Agreement shall be in writing and sent by certified or registered mail or via nationally recognized overnight express courier (UPS, Fed Ex, Airborne) addressed to the address included in the first paragraph of this Agreement, or to such other address or addresses as shall, from time to time, be furnished in writing by the party to receive such notice to the other party.

{tc V0 "127. Relationship of the Parties"}26. **Relationship of the Parties.** The relationship created by virtue of this Agreement is solely that of independent contractor. Cox and Shea are independent business entities and neither has any authority to act for, or on behalf of, or bind the other to, any contract, without the other's written approval.

{tc V0 "128. Indemnification"}27. **Indemnification.**

27.1 **By Shea.** Shea agrees to indemnify, and hold Cox, its Affiliates, employees, agents and contractors harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) arising in connection with property damage and/or personal injury to Cox's employees, agents or contractors, or damage to the Cox Network, resulting from the negligent acts or omissions of Shea, its Affiliates, employees, contractors or agents.

27.2 **By Cox.** Cox agrees to indemnify, defend and hold Shea harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) arising in connection with property damage and/or personal injury to Shea's employees, agents or contractors, invitees, or licensees or damage to any Property or Building, resulting from the negligent acts or omissions of Cox, its Affiliates, employees, contractors or agents.

27.3 The provisions contained within this Section 27 shall survive the expiration or termination of this Agreement.

{tc V0 "129. Limitation of Liability"}28. **Limitation of Liability.**

NOTWITHSTANDING THE TERMS OF ANY PROVISIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES FOR LOST REVENUES, LOSS OF

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**PROFITS, OR LOSS OF CUSTOMERS OR TENANTS OR SIMILAR
CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN RELATION TO
THIS AGREEMENT.**

{c W0 "130. Assignment"}29. Assignment.

29.1 No Assignment. Neither Cox nor Shea 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 shall be effective without the prior written consent of the other party, (i) except as provided in Sections 29.2 or 29.3 or (ii) if the assigning party is in breach of material obligations under this Agreement.

29.2 Assignment by Shea. Shea shall have the right to assign its right, title and interest without Cox's consent to (i) any other developer in connection with an assignment of substantially all of the then existing interest in the Development; (ii) to any entity purchasing or acquiring an Shea Building or individual Property within the Development provided that Shea complies with Section 28.5 of this Agreement; (iii) to any entity which has, directly or indirectly, a 30% or greater interest in Shea (a "Shea Parent") or in which Shea has a 30% or greater interest (an "Shea Affiliate"); (iv) to any entity with which Shea may merge or consolidate; or (v) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership of the Development. Any such assignment shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Shea's obligations under this Agreement arising from and after the effective date of assignment in a written agreement, in form reasonably acceptable to Cox, assuming without condition, reservation or exception, the obligations of Shea under this Agreement that are to be performed after the effective date of the assignment, then Shea shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

29.3 Assignment by Cox. Cox shall have the right to assign its right, title and interest without Cox's consent to (i) to any entity which has, directly or indirectly, a 30% or greater interest in Cox (a "Parent") or in which Cox has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox may merge or consolidate; or (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership of Cox. Any such assignment shall not be effective until the assignee signs and delivers to Cox 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 in a written agreement, in form reasonably acceptable to Shea, 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. Any transfer, sale or assignment shall be subject to approval of the local franchising authorities.

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29.4 Payment Obligations. Except for transfers or assignments to an Shea Affiliate or to an Shea Parent, payment of Percentage Fee obligations are personal to Shea and shall not transfer to any successor in interest to Shea, whether by way or merger, consolidation, purchase of assets or otherwise. Successors, transferees or assignees of Shea's interest in any Shea Buildings or Property shall not be entitled to receipt of the Percentage Fee applicable to such Building or Property regardless of whether such Property contains a Building or other improvements at the time sale, transfer, assignment or conveyance.

29.5 Building/Property Transfer. If during the Term of this Agreement, Shea sells, transfers, assigns or otherwise conveys a Building or parcel of Property to a third party ("Third Party Building" or "Third Party Property"), Shea shall cause such Third Party Building or Third Party Property owner to execute Cox's standard building access agreement ("Access Agreement") substantially conforming to the document set forth as Exhibit D hereto. Shea shall make no representation to such Third Party Building owner or Third Party Property owner regarding payment of Percentage Fees. If Cox provides Communication Services to tenants of such Third Party Building owner, after assignment, sale, or transfer of the Building or Property from Shea to such Third Party Building owner or Third Party Property owner, Shea shall not be entitled to payment of Percentage Fees with respect to Communication Services provided to such Building by Cox.

(c) (u) "131. No Liens")30. No Liens. Cox may use subcontractors to install, repair or maintain the Communications Services on the Properties. In the event any Cox subcontractor places a lien on any Property as a result of the work performed at the request of Cox, Cox shall within thirty (30) days of receipt of notice from Shea cause such lien to be discharged or released.

(c) (u) "132. Arbitration")31. 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:

31.1 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. 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. 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

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shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

31.2 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. Shea, or any successor or assign, 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. 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. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

31.3 Legal Proceedings. Either party may file legal proceedings in any court of competent jurisdiction in the State of Arizona (i) to enforce the mediation and arbitration provisions herein; (ii) to enforce the arbitrator's award pursuant Section 30.2 of this Agreement; or (iii) to obtain injunctive or declaratory relief where a party does not have an adequate remedy at law.

32. Notices. Notices under this Agreement shall be in writing and delivered to the persons or offices of the parties stated herein. The effective date of any notice hereunder shall be the date of delivery of such notice and not the date of mailing. Notice shall be deemed to have been delivered on the earlier of (i) one (1) day after it is confirmed by sender's equipment to have been transmitted via facsimile; (ii) on the date

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actually received or (iii) the date actually received if sent via overnight courier. The mailing addresses and facsimile numbers of the parties are set forth below:

To Cox: Cox Business Services, LLC
2095 W. Pinnacle Peak
Suite 110
Phoenix, Arizona 85027
Robert Carter
Vice President
Facsimile:

With a copy to: Cox Business Services, LLC
1400 Lake Hearn Drive, N.E.
Atlanta, Georgia 30319
Mark F. Padilla
Senior Counsel

To Shea: _____

Attention:
Facsimile:
E-Mail:

With a copy to: _____

33. Survival Rights. Upon expiration or earlier termination of this Agreement, or of a Property License, the Parties desire that certain provisions of this Agreement, including, but not limited to those specifically set forth below, survive expiration or termination to allow for the efficient transfer of obligations with respect to Buildings and Properties, and for the continuous and seamless provision of Communication Services to Tenants within the applicable Buildings or Properties.

33.1 Percentage Fee Payments. Upon termination or earlier expiration of this Agreement, Cox's obligation under this Agreement to make Percentage Fee payments with respect to Communication Services that Cox provides to Tenants under Section 32.3 beyond the termination or expiration date shall survive termination or expiration; provided, however, that in no event shall this obligation survive more than one (1) year following termination or expiration of this Agreement notwithstanding that Communication Services to certain Tenants may continue beyond this period.

33.2 Removal of Electronic Equipment. The Parties acknowledge that Cox desires to remove the Electronic Equipment within SHEA Buildings upon the termination

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or expiration of this Agreement, but that this Electronic Equipment is required to provision Communication Services to Tenants under Section 33.3 of this Agreement. Accordingly, this Agreement and the access rights hereunder shall survive for a period of time the latter of which shall be (i) 180 days following termination or expiration of this Agreement; or (ii) 60 days following the termination of Communication Services to all Tenants in an applicable Shea Building.

33.3 Transition/Termination of Communication Services. The Parties acknowledge that provision of Communication Services to Tenants is provided under a separate agreement between Cox and Tenants the term of which may extend beyond the Term of this Agreement. Further, certain Communication Services provided by Cox are subject to regulatory authority which restricts Cox's ability to terminate the applicable Communication Service unless and until the Tenant has been able to procure an alternate provider. Upon termination or expiration of this Agreement, the parties shall work in good faith to allow Cox to complete its obligations under its agreement with Tenants and to ensure that Cox can continue to provide Communication Services to Tenants to allow same to find alternate service providers as specified by the governmental agencies having jurisdiction over the provision of services by Cox.

33.4 Marketing Issues. Upon the expiration or earlier termination of this Agreement, the Parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the Marketing relationships established under this Agreement. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement and cease using the trade name, trademarks or other intellectual property rights of the other Party.

33.5 No Obstruction. The Parties acknowledge that the Cox Backbone Conduit, and other Cox owned conduit installed in the Rights of Way shall remain the property of Cox after termination and expiration of this Agreement but that such conduit will be connected to Cox Building Conduit which shall become the personal property of Shea as provided in this Agreement. The parties shall work in good faith to disconnect the Fiber/Cables in such conduits so as to allow Cox to continue to use the Cox Backbone Conduit to provide telecommunication services to Third Party Buildings or Third Party Properties, including the use of the POP Easement. Shea shall not in any way obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Third Party Building owners for provision of Communication Services to such buildings. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by the Maricopa County with respect to any streets, Improvements or Rights of Way which have been approved and accepted by the Maricopa County as of the date of such termination; (ii) such easements which have been granted to (or should have been granted to) Cox by Shea or Third Party Building and/or Third Party Property owners; (iii) and any rights or use granted by utilities or telecommunications carriers described in Section 4 of this Agreement.

{tc V0 "133. Waiver of Jury Trial"} {tc V0 "134. Miscellaneous"} 34.
Miscellaneous. -- This Agreement and the exhibits hereto is the entire

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understanding between the parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. Failure of either party to exercise any of its remedies as set forth in this Agreement or at law or in equity in the event of any default shall not constitute a waiver of the right to exercise the same in the event of a subsequent default. In the event that any term or provision of this Agreement is found to be invalid or unenforceable, such provision shall be deemed removed from this Agreement and the remainder of this Agreement shall remain in effect. The prevailing party in any action brought under this Agreement shall be entitled to recover from the other party reasonable attorney's fees, costs and necessary disbursements. This Agreement shall be governed by the laws of Arizona. This Agreement and the obligations of the parties shall be subject to all applicable laws, regulations, court rulings, administrative orders, and residential decrees, as they may be amended from time to time. Each party represents that it has not dealt with any real estate agents or brokers in connection with this Agreement, and to the extent any party has made any such arrangements, such party shall indemnify the other party with respect to any claims by such broker.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement on the date set forth below, but the Agreement shall be effective on the Effective Date.

"COX"

Cox Business Services, LLC, as agent for
CoxCom, Inc. (d/b/a Cox Communications)

By: _____
Robert Carter

Title: Vice-President & General Manager
Cox Business Services, LLC.

Date: _____

"SHEA"

Shea Homes & Sunbelt Holdings Pleasant Point, LLC

By: _____

Title:

Date: _____

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EXHIBIT A

**SPECIFICATIONS FOR THE INSTALLATION OF
UNDERGROUND COMMERCIAL CONDUIT AND EXTERIOR ACCESS**

The Specifications for the Installation of Underground Commercial Conduit and Exterior Access ("Specifications") are necessary for Cox to properly provide Communication Services to Tenants within the Property. Shea shall be responsible for ensuring that all work performed at the Property complies with the Specifications set forth in this Exhibit A. Throughout this Exhibit, the term "Owner/Developer" shall refer to SHEA. Specifications for the attached exhibits are subject to change due to duration of the agreement.

I. UNDERGROUND COMMERCIAL CONDUIT SYSTEMS

1. **DEVELOPER/OWNER** shall perform all of the work described herein and is solely responsible for work performed by its employees, contractors, subcontractors, agents and representatives.
2. **IMPROVEMENTS.** Owner shall be responsible for placement of all Improvements within the Development.
3. **SURVEY.** Surveying of street improvements, lot lines, finished grade, etc. necessary for the installation of underground facilities should be completed and markers or stakes placed prior to the start of the installation. Grade and property line stakes must show any offset measurements, and all markers must be maintained during construction.
4. **TRENCHING ROUTING MAPS.** The Owner/Developer shall send joint utility trench routing maps to Cox's Project Coordinator as soon as they are available. A minimum of sixty (60) days from receipt by Cox to the start of trenching is preferred. Final power of telephone company trench route maps are preferred; however, preliminary maps will be helpful in the completion of the Cox facilities design. Please send all trench routing maps to the following address:

COX COMMUNICATIONS

[Enter appropriate address]

ATTENTION: COMMERCIAL PROJECT COORDINATOR

5. **COORDINATION, SUPERVISION AND PROTECTION.** The Owner/Developer shall provide supervision over, and coordination among the various contractors working within the Property in order to prevent damage to the Cox facilities. The Owner/Developer shall ensure that all Cox facilities are installed in the locations shown on the construction drawings. The Owner/Developer is responsible for the cost of repairs, replacement, relocation or

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other corrections to facilities due to the Owner/Developer's negligence in its failure to provide the required supervision to otherwise comply with these guidelines.

6. PERMITS. The Owner/Developer shall provide all permits and approvals necessary for excavation and placement of conduits.
7. INSTALLATIONS.
 - A. Pull boxes are not allowed in the sidewalks except where the width of the sidewalk is the same width as the easement/right-of-way.
 - B. Owner/Developer shall use reasonable care in protecting Cox facilities both during and after installation. Owner/Developer shall be liable for any loss or destruction of said facilities directly resulting from the negligence of Owner/Developer. Should damage be caused by any contractors working in and about the Property, the Owner/Developer agrees to assist Cox in ascertaining the party responsible for any damage to such facilities and to assist in obtaining reimbursement for Cox.
8. RETAINING WALL. When required, retaining walls shall be provided by the Owner/Developer to protect aboveground enclosures or other equipment.
9. CONDUIT (DUCT) AS SLEEVES. Conduit is required for all street crossings. Conduit for all cable shall be provided at the Owner/Developer's expense. The following minimum sizes for conduits are required:
 - A. Two (4") inch minimum-size conduits provided by Owner/Developer will be installed under all street and alleys and capped at both ends, and remain exposed and accessible during lateral Cox Building Conduit placement. An approved 1/8" jet line or pull rope having a minimum average tensile strength of 200 pounds will be installed for all conduits. Only Cox specified conduit with a minimum rating of Schedule 40 shall be used within the Property.
 - B. Two four (4") inch minimum-size sleeves shall be installed under all streets and alleys for each distribution cable crossing. An approved 1/8" jet line or pull rope having a minimum average tensile strength of 200 pounds will be installed for all conduits. Only Cox specified conduit with a minimum rating of Schedule 40 shall be used within the Property.
 - C. Owner/Developer is responsible for providing a location of sufficient width and depth to ensure adequate clearance is maintained from other

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utilities substructures and property lines. Owner/Developer shall provide Cox with one copy of "As Installed" drawings for the conduits.

- D. Conduit will be provided clear of internal obstructions so that the Cox facilities may be easily installed. Out-of-roundness or egg-shaping of the conduit is not permitted. It will be the responsibility of the Owner/Developer to maintain the roundness and openness of the conduits. When conduits are found which are obstructed or out-of-round, the Owner/Developer will clear or replace the conduit promptly upon notification by the Cox Project Coordinator.

10. PAVING. All paving, where required, shall be provided by the Owner/Developer or subcontractor and installed to the requirements of the local governing agency.

11. POWER AND OTHER UTILITY REQUIREMENTS. The design(s) prepared for this job may also depict the facilities to be installed for the power company and/or other utility. Any questions concerning details of such utility installation should be referred to such utility.

II. EXTERIOR BUILDING ACCESS ENCLOSURES

- A. Equipment room foundation sleeves shall be a minimum two three (3") inch I.D. Locations to be coordinated with Cox Project coordinator.
- B. Where a utility closet is used in a commercial building, Developer will provide, where needed two three (3") I.D. foundation sleeves with location determined by Cox design. In addition a 70 square foot area directly above the foundation relief sleeve will be required for placement of equipment in utility closet.
- C. The foundation relief sleeves shall be installed with a minimum of six (6") inches above and below the foundation with the ends taped or capped to prevent the conduit from filling with concrete.
- D. Grounding is to comply with the National Electric code and all local ordinances.

Any questions regarding the above standards and Specifications should be directed to the following:

COX COMMUNICATIONS

[System - enter appropriate address]
ATTN: COX PROJECT COORDINATOR

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EXHIBIT B

COX COMMUNICATIONS PREWIRE/SPECIFICATIONS

- I. **PREWIRE SPECIFICATIONS.** The following are specifications to prewire or post-wire commercial units for Cox's Broadband Communication Services. These specifications should be followed if the Owner's tenants desire to install their own prewires. Please refer to the attached illustrations, if any.
- A. Except as required by applicable code, Owner/Developer agrees to use RG-6U QUAD shield cable.
 - B. Each outlet shall be wired with a single piece of coaxial cable originating at the prewire box mounted at the side of the unit above the foundation relief sleeve and extending to the desired location of the outlet. Each prewire may not exceed 200 feet total length without prior written authorization from a Cox Project Coordinator.
 - C. The cable of at least one of the outlets should be placed over the rafters at a location near an attic access hole, if there is one, or near any point in which access is available.
 - D. No staples shall be used to secure coaxial cable.
 - E. Where it is necessary to go through the wall studs, coaxial cable should be placed in a manner to ensure that all local, state and federal requirements are met. After cable is pulled through studs, it must be inspected to ensure no damage has occurred.
 - F. Where required by applicable code, Owner/Developer shall install RG-6U QUAD shield plenum cable. Where it is necessary to penetrate a fire-rated wall, the hole must be sealed with a non-flammable material and the RG-6U QUAD shield plenum coaxial cable must be placed in a metallic sleeve. Where it is necessary to terminate the coaxial cable within the firewall, a metallic junction box shall be used.
 - G. Leave six (6) feet of cable coiled and taped at the outlet location behind the plaster ring.
 - H. If staples or nails pierce the shield, or if the dimensions of the cable are altered as a result of smashing or kinking, the cables may be unusable and require replacement at the Owner/Developer's expense. Cables placed in tight 90 degree angles usually cause damage.

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- I. Each precirc drop shall be tagged with the address, and/or suite number for easy reference. If more than one outlet is precirc in each suite, the multiple outlets shall be bundled together with a tie wrap.

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EXHIBIT C

PROPERTY LICENSE

This Property License is made and entered into as of this _____ day of _____, 2002 by and between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications ("Cox"), and Shea Homes & Sunbelt Holdings Pleasant Point, LLC, an Arizona limited liability company ("Shea").

WHEREAS, Cox and Shea have entered into that certain Master Property Access Agreement dated as of October __, 2002 (the "Agreement"), providing for Shea to have certain obligations regarding the Vistancia Development ("Development") and for Cox to have certain rights of access and to provide certain Communication Services to the Tenants of Buildings therein.

WHEREAS, Pursuant to the Agreement, Cox and Shea enter into a Property License for each Building or Property unless otherwise provided in the Agreement.

WHEREAS, Cox and Shea now desire to enter into this Property License regarding the Building located within the Development with an address at _____ and commonly known as _____

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the Agreement, the Parties mutually agree, as follows:

1. **Definitions.** Except as otherwise set forth in this Property License, all terms used herein and denoted by capitalized initial letters shall have the meanings ascribed to them in the Agreement.

2. **Agreement.** This Property License is entered into pursuant to and subject to all of the terms and provisions of the Agreement, including without limitation the obligation of Cox to pay the Percentage Fee payable under the Agreement with respect to Tenants obtain Communication Services from Cox. The term of this Property License shall be coterminous with the Agreement; provided that this Property License shall expire upon the Transfer of the Building as provided in Section __ of the Agreement. Each party shall be bound by all of the representations, covenants, obligations, liabilities, terms and conditions binding each party under the Agreement.

3. **Right of Access.** Cox shall have the rights of access to the Building under this Property License as set forth in the Agreement, and further the right to enter upon the Property and to install the Cox Network upon and within the Property for the purposes of providing Communications Services to the Tenant(s) of the Property, and to market the Communications Services to the Tenant(s) of the Property.

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4. Percentage Fee. Provided that SHEA has complied with all the requirements of the Agreement, including but not limited to, the provision of Cox Backbone Conduit and Cox Building Conduit to with respect to this Property. Cox will pay Shea the Percentage Fee as provided in this Agreement with regards to the Communication Services delivered to Tenants, as provided in the Agreement.

5. Default. Any failure by either party to comply with the terms and provisions of this Property License shall constitute a default hereunder.

6. Miscellaneous Provisions. This Property License may not be amended except by a written instrument executed by both parties. Failure of either party to exercise any of its remedies under this Property License or the Agreement or at law or in equity in the event of a default hereunder shall not constitute a waiver of the right to exercise the same in the event of a subsequent default. The prevailing party in any action brought under this Property License shall be entitled to recover from the other party reasonable attorney's fees, costs and necessary disbursements. This Property License shall be governed by the laws of Arizona. This Property License and the obligations of the parties shall be subject to all applicable laws, regulations, court rulings, administrative orders, and residential decrees, as they may be amended from time to time.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

Cox Business Services, LLC, as agent for CoxCom, Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Shea Homes & Sunbelt Holdings Pleasant Point, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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EXHIBIT D

**TELECOMMUNICATIONS FACILITIES AND EASEMENT AGREEMENT
(Commercial)**

This Telecommunications Facilities Agreement ("Agreement") is entered into this ____ day of _____, 2002 by and between CoxCom, Inc. d/b/a Cox Communications ("Cox") and ("Owner"). Owner holds title to, or is the authorized agent of the title holder of, certain real property located at _____ and commonly known as _____ ("Property"), and Owner and Cox desire to enter into this Agreement for Cox to provide its telecommunications services to the Property under the terms and conditions herein.

1. **Grant of Access and Easement.** Owner hereby grants to Cox permission to install and maintain its telecommunications distribution facilities including conduit, vaults and manholes ("Facilities") on the Property for the purpose of providing telecommunications services including voice, video and data telecommunications services ("Services") to Owner's tenants and/or other persons occupying the Property ("Tenants"). If the Property is an unimproved parcel of property at the time of the execution of this Agreement, and does not contain structures or conduit for use by Cox, Owner shall reimburse Cox for the reasonable cost for Cox to install telecommunications conduit from the public rights of way to the building's entrance facility. Owner further grants to Cox a perpetual non-exclusive easement together with the right to enter the Property at any time to install, connect, disconnect, transfer, service, remove or repair the Facilities. Upon termination of Cox's provision of Services to the Property, Cox may at its option enter upon the Property and remove the Facilities. Cox's right to enter upon the Property for the purpose of removing its Facilities shall survive termination of this Agreement.

2. **Ownership of Facilities.** Except for Internal Wiring, the Facilities are and shall remain the sole and exclusive property of Cox and shall not become fixtures of the Property. Internal Wiring is defined as that wiring, ports and outlets located within a commercial unit receiving Services back up to the demarcation point. The demarcation point in the case of telephone Services is the building's minimum point of entry, and for all other telecommunication Services is that point roughly twelve (12) inches outside of the Tenant's individual commercial unit.

3. **Obligations of Cox.** Cox hereby agrees as follows:

- (i) If additional Facilities are required, to install the Facilities at its expense including dirt trenching, backfill, compacting and boring, cable, conduit, electronics, pedestals, splitters, and any other materials and labor reasonably necessary to install the Facilities in accordance with Exhibit "A" attached hereto. Cox shall keep the Property free of liens resulting from the installation of the Cox Facilities;
- (ii) That Owner shall have no responsibility for the Services provided by Cox to Owner's tenants or for the proper functioning of the Facilities;
- (iii) To repair any damage to Owner's landscaping, personal property or underground facilities located on the Property (including any necessary replacements), if such damage results directly from Cox's installation of the Facilities, and to restore the Property to as near its condition prior to installation of the Facilities as may be practicable to Owner's reasonable satisfaction; and
- (iv) To obtain all necessary governmental authorizations for the construction and operation of the Facilities on the Property and to perform such construction in accordance with the plans attached hereto as Exhibit "A".

4. **Obligations of Owner.** Owner hereby agrees as follows:

- (i) That Owner will not use or permit others to use the Facilities or any equipment that interferes with the Facilities' operation;
- (ii) That Owner will not move, disturb, alter or change the Facilities or permit any third party to do so without Cox's prior written consent;
- (iii) That this Agreement and Cox's rights granted herein shall be binding upon Owner's successors and assigns and that Owner shall notify any successor Property owner of Cox's rights under this Agreement;
- (iv) That Owner has full authority to execute this Agreement and to grant the rights herein granted and that there are no prior or existing agreements, nor will there be any agreements during the Term, that would be breached by the execution by Owner of this Agreement or by Cox's provision of the Services.

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PREREQUISITE

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(v) That Owner will execute a Memorandum of Agreement and Grant of Easement a copy of which is set forth as Exhibit B to evidence Cox's rights hereunder.

(vi) Owner shall be responsible for locating all private utility lines within the Property which are not identified or covered by the local Utility Protection laws.

5. Indemnification.

(i) Owner agrees to indemnify, defend and hold Cox harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) arising out of or in connection with (a) the renting, leasing or purchasing of space at the Property, (b) injuries or damage to Cox's employees, agents or the Facilities arising out of or in connection with the negligent acts or omissions of Owner, its agents or employees, or (c) Owner's breach of this Agreement.

(ii) Cox agrees to indemnify, defend and hold Owner harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) for personal injury or property damages arising out of or in connection with (a) Cox's negligence in the installation of the Facilities, or (b) Cox's breach of this Agreement.

6. Term. This Agreement shall be effective upon execution by the parties for a term of _____ years. Thereafter, this Agreement shall remain in effect for so long as Cox is providing Services to Tenants within the Property. The foregoing notwithstanding, Cox may terminate this Agreement in the event Cox is unable to continue the distribution of any Services because of any law, rule, regulation or judgment of any court, or any similar reason beyond the reasonable control of Cox, or if the applicable franchise or licenses are assigned, terminated, surrendered or revoked for any reason.

7. Default. If either party fails to perform any material condition or agreement to be performed or observed by it hereunder and such default is not cured within thirty (30) days after written notice from the other party, the non-defaulting party shall have the right to immediately terminate this Agreement.

8. Miscellaneous. This Agreement is the entire understanding between the parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. Cox may assign this Agreement or any part to any affiliate or any entity merging with or acquiring substantially all of the assets of Cox or to any telecommunications carrier providing services to tenants. Notices required to be given shall be sent by United States Certified Mail or nationally recognized courier to the address set forth below each parties signature. This Agreement shall be governed by the laws of the state where the property is located.

OWNER:
Name: _____
Signature: _____
Title: _____
Date: _____
Address: _____

CoxCom, Inc.
Name: _____
Signature: _____
Title: Vice President & General Manager Date: _____
Date: _____
Address: _____

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EXHIBIT A to the Telecommunications Agreement

INSTALLATION PLANS (IF ANY)

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C03184

Exhibit B to the Telecommunications Agreement

Memorandum

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

Cox Communications)
(Enter Cox Address)
(Enter Cox Address)

Attention: Vice President and General Manager)

NO TAX DUE - NO CONSIDERATION PAID

DOCUMENT TRANSFER TAX \$0.00

(Space above line for Recorder's use only)

MEMORANDUM OF AGREEMENT AND GRANT OF EASEMENT FOR
TELECOMMUNICATIONS FACILITIES

PLEASE TAKE NOTICE as follows:

1. CoxCom, Inc. d/b/a Cox Communications ("Cox"), a Delaware corporation and _____ ("Owner"), a _____ corporation have entered into an agreement to Telecommunication Facilities Agreement dated _____, 2002 ("Agreement").

2. Owner hereby grants to Cox a non-exclusive perpetual easement entitling Cox to provide cable television, telephone, data transmission and/or other telecommunications service and programming to all units located on the property described on the Exhibit attached hereto and incorporated herein by this reference (the "Property") and to any management/leasing or office and all other common area facilities located on the Property. Owner and Cox are recording this memorandum in the Official Records of _____ to evidence and confirm the same of record.

3. The Agreement grants to Cox rights of access, ingress and egress to and from the Property for the purpose of placing, removing, repairing, and maintaining telecommunications facilities and services at the Property and such rights will survive the expiration or earlier termination of the Agreement to permit Cox to remove its facilities.

4. The Agreement is effective on _____ and shall continue for so long as Cox is providing Services at the Property.

5. The Agreement further provides that Cox shall own fee title to certain telecommunications facilities and equipment constructed or installed at the Property, and that the same constitute the personal property of Cox and shall not be considered real property or fixtures or become a part of the Property despite attachment to the Property.

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6. The Agreement shall run with the Property and shall be binding upon and inure to the benefit of (a) Owner and any person acquiring any right, title or interest in or to the Property or any portion thereof and (b) Cox and its permitted successors and assigns. A copy of relevant provisions of the Agreement will be provided to any properly interested person upon written request.

7. The Memorandum is created and recorded for the purpose of providing notice of the terms and provisions of the Agreement and does not vary or amend any terms and provisions of the Agreement, or affect or invalidate any prior easement rights Cox may have on the Property. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum this day of _____, 200_.

OWNER: _____

By: _____
Name: _____
Title: _____

CoxCom, Inc.

By: _____
Name: _____
Title: Vice President & General Manager _____

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State of _____ }
County of _____ } ss

On this ____ day of _____, 2001, before me personally appeared _____ to me personally known who, being by me duly sworn, did say that he is the Vice President and General Manager of CoxCom, Inc. and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed by official seal in the County and States aforesaid on the date set forth above.

My term expires _____, 200__

NOTARY PUBLIC

State of _____ }
County of _____ } ss

On this ____ day of _____, 2001, before me personally appeared _____ to me personally known who, being by me duly sworn, did say that he is the _____ of _____ and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed by official seal in the County and States aforesaid on the date set forth above.

My term expires _____, 200__

Notary Public

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Legal Description of the Property

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EXHIBIT E

POP EASEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
Cox Communications
2095 W. Pinnacle Peak, Suite 110
Phoenix, Arizona 85027
Attn: General Manager

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space above for recorders use only

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this ____ day of _____, ____ by and between Shea Homes & Sunbelt Holdings Pleasant Point, LLC, an Arizona limited liability company ("Grantor"), and CoxCom, Inc., a Delaware corporation ("Grantee"). Grantor does hereby grant to Grantee, its affiliates, successors and assigns, a perpetual easement (unless terminated in accordance with the terms of Grant of Easement) to construct, place, operate, inspect, maintain, repair, replace and remove telecommunications facilities as Grantee may from time-to-time require, consisting of conduits, strands, wires, coaxial cables, hardware, pads, markers, pedestals, junction boxes with wires and cables and necessary fixtures and appurtenances (collectively "Facilities"), in, under, over, and upon the real property owned by Grantor located in the County of Maricopa, State of Arizona, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Easement Area").

Grantor further hereby grants to Grantee, its affiliates, successors and assigns, the right to enter upon that portion of the real property owned by Grantor located in County of Maricopa, State of Arizona known as the Vistancia Development for the purpose of ingress, egress and access to the Easement Area and to install underground conduit, wires and cables to permit the Facilities to be connected to other facilities of Grantee located within the public right of way.

Grantee shall have the right to use, relocate and/or remove its Facilities within the Easement Area and may make changes, including additions and substitutions to its Facilities as it deems necessary. The Facilities shall at all times remain the property of Grantee and Grantor shall not damage the Facilities nor interfere with Grantee's use of the Facilities. Grantee shall have the right to clear obstructions including trees, roots and undergrowth from the Easement Area. Grantor, its successors and assigns shall have the right to use the Easement Area for any purpose which is not inconsistent with Grantee's rights herein.

Prior to the construction, placement, or replacement of Grantee's Facilities within the Easement Area, or any additions or substitutions thereof, Grantee shall obtain the approval by

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Grantor of plans and specifications for such Facilities, or any additions or substitutions thereof, which approval shall not be unreasonably withheld, delayed or conditioned, provided that Grantor may require any Facilities to be appropriately secured or enclosed, which requirement shall not be construed as an unreasonable condition of Grantor's Consent.

Upon any termination of this Easement Agreement, Grantee hereby agrees to execute and deliver to Grantor a quitclaim deed remising, releasing and quitclaiming to Grantor all of Grantee's rights and interests hereunder.

IN WITNESS WHEREOF, this Easement Agreement is made and executed as of the date hereof.

GRANTOR:

**SHEA HOMES & SUNBELT HOLDINGS
PLEASANT POINT, LLC**
An Arizona limited liability company

By: _____
Print Name: _____
Title: _____

GRANTEE:

COX COM. INC., a Delaware corporation

By: _____
Print Name: _____
Title: _____

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STATE OF ARIZONA)
)
COUNTY OF MARICOPA)
)

On _____ before me, _____, a notary public, personally appeared _____ known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Notary Seal)
My commission Expires:

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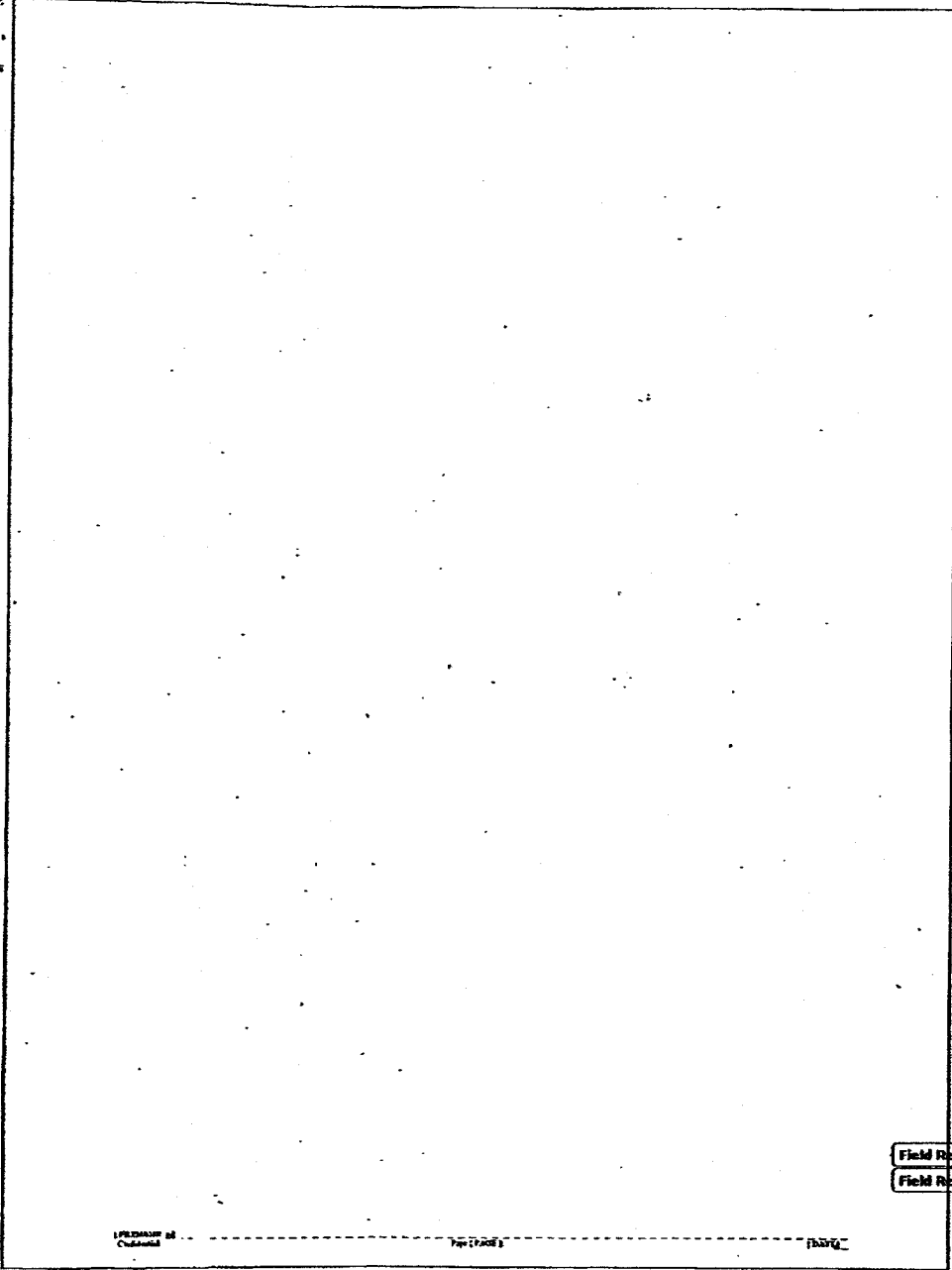
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Page 3

TC-12

Vistancia 10/8/02

Byron	Franklin
Curt	Don
Rick	Paul
Mark	Sheela

* Add 5 wks to Negotiating *

Options:

Quest gave up their franchise by the corporation commission to Incipator, who can only provide phone.

Shea can guarantee to keep out competition. Cox can purchase the knowledge. What is it worth to us.

Shea is very adamant about seeing our models. Franklin committing to look at their return of \$2 million.

Shea wants to know what they are going to make.

TC-13

Other notes of Vistancia



How can we negotiate?

Shea's been in (S.C.) 60-65%

* Shea has a third party entity that has way to lock out legally any other access rights.

via financial bundles to access.

* Get Commercial financials also.

* Need to provide sketch of single P.S. to Mark.

In market must protect ourselves can we do anything?

See Shea's response

Cox Digital Community Options For Vistancia

COX DIGITAL COMMUNITY PROGRAM - THE FULL SERVICE SOLUTION COX

As a full service telecommunications provider, Cox Communications offers the flexibility of several service options to best fit the needs of any developer and their residents. Each option has its own particular benefits for the community. The flexibility is in the fact that through either option, the residents are receiving the latest in telecommunications technology as well as the finest in customer service support.

For Vistancia, Cox Communications offers the following options:

Option 1

For Cox to provide digital cable, data and telephone, at completion of the model complex to assist in promoting the Shea/Cox partnership to future residents, would require Shea to enter into an exclusive marketing agreement with Cox for a term of 20 years to secure Vistancia as a Cox Digital Community. By entering into an exclusive marketing agreement with Cox, Shea would receive the benefits of an extensive marketing partnership supported by Cox to help promote the Cox/Shea alliance and Vistancia to prospective residents. Through this Marketing Agreement, Shea would participate in the Cox Digital Community Marketing Compensation Program per the attached schedule, for video, data and telephony. In addition, Shea would be required to provide Cox, prior to installation of service, a \$2 million dollar contribution in aid of capital infrastructure.

* Restriction of Shea's ability to provide any service in P.S.

Option 2

10% CC. need to bulk.

Cox would offer to the all the residents of Vistancia the option of Cox Classic video at a bulk discount of 5% of the prevailing retail rate, to include free installation. For selecting this option, Shea would be required to enter into an exclusive marketing agreement and bulk service agreement for a term of 20 years to secure Vistancia as a Cox Digital Community. By entering into an exclusive marketing agreement with Cox, Shea would receive the benefits of an extensive marketing partnership supported by Cox to help promote the Cox/Shea alliance and Vistancia to prospective residents. Through this agreement, Shea would participate in the Cox Digital Community Marketing Compensation Program, per the attached schedule for all non-bulked products, to include data and phone. In addition, Shea would be required to provide Cox, prior to installation of service, a \$1.8 million dollar contribution in aid of capital infrastructure.

Option 3

* Not want to bulk HSI.

Cox would offer to the all the residents of Vistancia the option of Cox High Speed Internet at a bulk discount of 5% of the prevailing retail rate, to include free installation and a free cable modem. For selecting this option, Shea would be required to enter into an exclusive marketing agreement and bulk service agreement for 20 years to secure Vistancia as a Cox Digital Community. By entering into an exclusive marketing agreement with Cox, Shea would receive the benefits of an extensive marketing partnership supported by Cox to help promote the

Cox/Shea alliance and Vistancia to prospective residents. Through this agreement, Shea would participate in the Cox Digital Community Marketing Compensation Program, per the attached schedule for all non-bulked products, to include video and phone. In addition, Shea would be required to provide Cox, prior to installation of service, a \$1.5 million dollar contribution in aid of capital infrastructure.

Option 4

Cox would offer to the all the residents of Vistancia the option of Cox Classic Video & Cox High Speed Internet at a bulk discount of 5% of the prevailing retail rate, to include free installation of both video, data and a free cable modem. For selecting this option, Shea would be required to enter into an exclusive marketing agreement and bulk service agreement for 20 years to secure Vistancia as a Cox Digital Community. By entering into an exclusive marketing agreement with Cox, Shea would receive further benefits of an extensive marketing partnership supported by Cox to help promote the partnership and community to prospective residents. Through this agreement, Shea would participate in the Cox Digital Community Marketing Compensation Program, per the attached schedule for phone only. In addition, Shea would be required to provide Cox, prior to installation of service, a \$1 million dollar contribution in aid of capital infrastructure.

Cox Digital Community Program – "Where It All Comes Together"

Through the Cox Digital Community Program, Shea is able to partner with Cox to receive a wide variety of marketing support to promote the advantages of the partnership. Some of which includes:

- Vistancia is recognized as a "Cox Digital Community" utilizing the latest in integrated fiber/coaxial infrastructure solution linking the best available resources for communications, video, data and entertainment services.
- Shea will be able to differentiate its community through the availability of the latest in telecommunications services.
- Discounted advertising on Cox Cable Programming through our Cable Rep partner.
- Co-op support in providing customized literature highlighting Shea/Cox partnership.
- Specific recognition of development in Cox's Community Profile section in our partnership with Linder Publishing.
- Recognition of Vistancia and Shea partnership in all builder supported advertising created by the New Business Development Group.
- Regular guest appearances and remote location shoots through our media partner, The Home Hunter.
- Assistance with development of website to promote the Vistancia community.
- Participation of the Shea/Sunbelt partnership in Cox Communications Corporate Alliance Program.

COX DIGITAL COMMUNITY MARKETING COMPENSATION PROGRAM

As part of the Cox Digital Community Program, Shea will be a participant in the marketing compensation program for all non-bulked products per the following schedule:

High Penetration

<u>Penetration</u>	<u>Compensation</u>
75% - 79%	15%
80% - 85%	16%
86% - 90%	17%
91% - 95%	18%
96% - 100%	20%

can we include in RS?

The marketing compensation shall be paid on net revenue collected (net of customer credits, marketing discounts, bad debt, rental fees, pay for view and other ancillary revenue). The penetration rates shall be determined as the number of Cox customers divided with the number of Cox ready homes passed (occupied or not). The payout in turn would be determined as the incremental net pro-rated total community Cox revenue times the above indicated achieved compensation percentage.

PRICING EXAMPLES

Option 1 - No Bulked Products

- Cox Classic - \$37.95*
- Cox High Speed Internet - \$34.95*
- Cox Digital Telephone Basic Service - \$11.75*

Option 2 - Bulked Cox Classic

- Cox Classic to all residents @ 5% discount of prevailing retail rate - \$36.05
- Free Installation
- Cox High Speed Internet - \$34.95
- Cox Digital Telephone Basic Service - \$11.75

Option 3 - Bulked Cox High Speed Internet

- Cox HSI to all residents billed @ 5% discount of prevailing retail rate - \$33.20
- Includes free installation and cable modem
- Cox Classic - \$37.95
- Cox Digital Telephone Basic Service - \$11.75

Option 4 - Bulked Cox Classic and Cox High Speed Internet

- Cox HSI and Cox Classic to all residents @ 5% discount of prevailing retail rate - \$69.25
- Includes free installation for video and data and free cable modem
- Cox Digital Telephone Basic Service - \$11.75

* Retail rate shown is current rate in place. Actual PRR will be determined at initiation of agreement and will be subject to taxes, annual rate increases and adjustments.

AGREEMENTS

To initiate and complete the process of providing infrastructure and activation of services in Vistancia, Shea Partners and Cox will need to enter into a Telecommunications Services, Access and Marketing Agreement ("TSA"), as well as a Bulk Service Agreement for any products provided to the community as a bulk option. The term of the TSA and any Bulk Agreements shall be 20 years.

For services to the commercial sector of Vistancia, Shea Partners and Cox Business Services will need to enter into a separate Master Property Access Agreement to secure access of infrastructure to the commercial parcels. Through these agreements, Cox Business Services commits to having service available to the commercial sites and building locations following the guidelines set forth in the agreement.

RESPONSIBILITIES

As part of the partnership, Shea and Cox need to agree to but not be limited to the following responsibilities in order to enhance and further the development of the partnership in the best interest of both parties. The full elements of the partnership shall be incorporated in the final Telecommunications Services, Access and Marketing Agreement ("TSA") and/or Bulk Service Agreements

SHEA RESPONSIBILITIES

Shea shall:

- a) designate Cox as the Preferred Provider of Telecommunications Services for Vistancia through the use of the Cox Digital Community logo;
- b) grant non-exclusive easements throughout Vistancia to allow Cox to provide the Telecommunications Services;
- c) use reasonable efforts to promote and market Cox's Telecommunications Services to residents;
- d) provide Cox with the names, addresses and move-in dates of residents;
- e) allow Cox to market its Telecommunications Services in Vistancia's model complex, throughout the property, and in the community; and
- f) comply with internal wire standards to be agreed to by the parties.

COX RESPONSIBILITIES

Cox shall:

- a) provide Telecommunications Services to residents-approximately 17,000 units, common area facilities (i.e. rec and sales centers) and models (number of comps to be discussed); as well as all commercial areas.
- b) provide Telecommunications Service to commercial buildings at Owners expense (i.e. golf clubhouse, maintenance buildings, corporate offices)
- c) design, install and maintain at its cost a Distribution System (including, but not limited to, the "drop" to each home and the necessary Telecommunications Systems facilities in the community). The Distribution System and service levels shall comply with all applicable FCC and other regulatory standards, municipal or local franchise requirements;
- d) own the Distribution System, have the right to limit or restrict the use of any part of the Distribution System by others, and have the right to provide Telecommunications Services to residents after the TSA with Shea expires or is terminated;

- e) cooperate with Shea in the design, installation and construction of the Distribution System and in activating the Telecommunications Services for the residents on or prior to the date they take occupancy of their home through the New Home Activation Program.

MARKETING RESPONSIBILITIES

1. Shea and its builder partners shall, in all its media and marketing materials for Vistancia, refer to Vistancia as a "Cox Digital Community" and describe Cox as Shea's "Preferred Telecommunications Provider" and display the "Cox Digital Community" logo where applicable.
2. Cox will train Shea's management and sales staff as well as Shea's builder partners concerning the Telecommunications Services offered by Cox and update them as to the results of and any changes to the program.
3. Shea management and sales staff shall promote Cox Telecommunications Services to the prospective homebuyers who visit the Vistancia models or information center. Shea shall assist Cox in soliciting Shea's builder partners to promote the partnership and the Cox Digital Program to prospective homebuyers.
4. Cox will offer Shea its Cox Digital Community Program benefits to highlight the Vistancia Master Planned Development and Shea's partnership with Cox, that includes representation in the Cox Community Profile section of the Arizona New Homes and Lifestyles magazine, guest appearances on the Home Hunter Television Show and recognition as a Cox Digital Community on Cox's Preferred Provider website.
5. Cox will supply Shea with marketing materials to allow Shea to display such materials highlighting Cox's services and the partnership with Shea. Additionally, Cox will support Shea's builder partners with similar marketing materials to promote the partnership.
6. Shea and its builder partners shall provide monthly homebuyer information to Cox and to allow Cox to promote its New Home Activation program to the Vistancia residents prior to move-in.
7. Shea and its builder partners shall provide space in its Vistancia models and information centers for Cox Digital Community displays to promote Cox Telecommunications Services.
8. Shea shall allow Cox to promote its Telecommunications Services in connection with Shea's and its builders-planned community events at Vistancia as the Preferred Telecommunications Provider.

CONCLUSION

Cox Communications appreciates the opportunity to be a part of this first class development and to be a partner with the Shea Family. We at Cox are confident that by selecting our Cox Digital Community Program to provide the premiere level of telecommunications services to Vistancia, you will receive the many benefits of a long-term provider who can produce results, keeping in mind the needs to make your community one of the most successful in the Valley of the Sun. Definitely your "Friends in the Digital Age."

TC-14

Drake, Paul (CCI-Phoenix)

From: Drake, Paul (CCI-Phoenix)
Sent: Wednesday, October 30, 2002 11:51 PM
To: Arthurs, Tisha (CCI-Phoenix)
Subject: RE: Shea Sunbelt - attached

Importance: High

Please keep in mind that I did this without my notes from the meeting, so I would like to review those also to be sure all the points they brought up were covered. My comments:

1. Item B 1st page

Add Shea/Sunbelt will pay contribution w/in 30 days of execution of agreement.

2. Term

Has either party can back out with 90 day notice language still included. You know this isn't what they want. How will you handle the objection if you leave as is?

3. Item 4a

"common area" language still there. Didn't Shea want a better definition? Also acceptance is misspelled.

You have included language stating that we would refund contribution if we default. You know FP&A will not buy off on that. You need to come up with something that will satisfy both parties. Additionally, there is nothing in agreement that states the if Shea/Sunbelt do not fulfill their terms, what monetary compensation are we entitled too. Because of anticipated revenues received we could build with only a 2 mill contribution. That figure was based on anticipated revenues. If project dies, we have stuff in the ground, no houses, no customers, no project. Will the \$2 mill cover what we have installed or do we need to have language stating we receive a larger amount pro rated on our full installation costs to provide everything.

4. Item 4b

"common area" again.
states foregoing compensation but does not reference an Exhibit showing marketing compensation schedule.

5. Item 4d

Add...shall grant \$2 million dollars upon 30 days of execution of agreement.

6. Item 5a (ii)

"any common area tract" remember they wanted that out...thought it would allow us to put signs up in common areas or parks. Needs to be either redefined or removed.

7. Item 5c

Again references marketing compensation, how it's paid but no reference to schedule or exhibit.

8. Item 5d

Should also reference exhibit containing marketing compensation schedule.

9. Exhibit C

C02472

- DRAFT COPY -

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

This CO-MARKETING AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this ___ day of ___, 2002 COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, in the context of the following facts:

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of Maricopa County, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services.

C. Cox has the financial ability and the technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Maricopa County that includes Vistancia under its License from Maricopa County, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and will make it available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

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

AGREEMENT

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

(a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.

(b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.

- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.
- (h) "Cox High Speed Internet" means the Internet Service Cox provides.
- (i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (k) "Initial Term" has the meaning provided in Section 2.
- (l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (n) "Marketing- Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
- (o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
- (p) "Master Developer" means Peoria Village Company L.L.C., an Arizona limited liability company
- (q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.
- (r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).
- (s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

- (t) "Official Records" means the official records of Maricopa County, Arizona, pertaining to real property
- (u) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (v) "Performance Default" has the meaning set forth in subsection 10(a)(ii).
- (w) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (h) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (x) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (y) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (z) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (aa) "Vistancia" means the SFRs within the master planned community, being developed in Maricopa County, Arizona, described in Recital A.
- (bb) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (cc) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.

(dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term

The initial term of this CMA (the "Initial Term") shall be shall be for a period of 15 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the renewal term then in effect, as applicable). The Initial Term and any renewal term are subject to early termination as provided in Sections 10 and 11 of this CMA.

25 yr. term

want this taken out

3. Easements and Access Rights.

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the

the Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat, at the sole cost and expense of Cox.

(iii) Pre-Wire Specifications. Master Developer shall use its reasonable good faith efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(iv) Post-CMA Closings. As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) License For Ingress & Egress to Subdivision Parcels. With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) Form of Easements. The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) Repair of Improvements. Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) Preferred Right to Offer Technology Services. During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or MFUs at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5)

shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia, and the Turnover Date has occurred with respect to all Owners Associations within Vistancia. If the Premises are composed exclusively or primarily of SFRs, the foregoing compensation will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox until the applicable Homeowner's Association for the Premises (the "HOA") converts to resident control (a "Conversion"). Upon a Conversion, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the HOA and, if the HOA continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the HOA. In the event that Shea/Sunbelt closes its sales complex at Vistancia (the "Sales Facility") prior to Conversion or if Shea/Sunbelt, in Cox's reasonable opinion, otherwise discontinues any of Shea/Sunbelt's marketing obligations hereunder, Cox may cease payment of the marketing compensation hereunder.

Shea/Sunbelt to provide document clearing project involvement of master for initial project.

see page 10

(c) Cox Obligation to Provide Technology Services. Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

one aspect of technology services clause

(i) CATV. Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) Data Service. Subject to legal and regulatory constraints, Cox ^{shall} provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy.

(i) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs, which shall be the responsibility of the applicable Neighborhood Builder(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master

Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to Maricopa County, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFR's/SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of Maricopa County adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(h) Model Home Service. Cox shall make available in one main model home per Neighborhood Builder, at Cox's sole cost and expense: *\$ @ project information center*

(i) Digital CATV. One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) Cox High Speed Internet Demo. One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) Signage at Point of Delivery. Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. Exclusive Marketing Rights and Marketing Incentive Fees.

(a) Exclusive Rights of Cox. During the Term of this CMA:

(i) Endorsement by Master Developer. Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) Marketing and Promotion of Technology Services. Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (h) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) Similar Agreements and Co-Branding. Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

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

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

Selected Option 1 - Final Source EB

Calculation and Payment of Marketing Compensation.

incorporate schedule →

Penetration rates will be based on Technology Services provided by Cox to SFRs built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made.

(e) Reporting by Neighborhood Builders. During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

Backbone?

(e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

Timely / effective

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

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

(d) Warranty. Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
- (ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) Construction Manager. Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) Marketing of Apartment Parcels

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) Required Insurance. During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) Damage or Destruction by Master Developer. In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) Damage or Destruction by Cox. In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) No Liability for Computer Damage. Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) Waiver of Subrogation. Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) Organization and Authority. Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) Due Execution. Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

(iii) No Conflict. Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement

Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Technology Services.

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

(ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is

due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

(b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) Cox Additional Remedies. In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from Maricopa County or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30

Contribution is provided if service is terminated

business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder; or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox-;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedurtes.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection

with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (H) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) Governing Law. This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in-tech formatted attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Shea/Sunbelt Holdings

Address:

By: _____
Its: _____

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

"Cox"

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

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

By: _____
Howard Tigerman
VP of Business Operations

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to Maricopa County, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by Maricopa County, the City of Peoria or applicable governmental authority to install in such trenches;

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

(1) **Network.** Plant activated to 750 Mhz 2-way modified HFC Network with a fiber Ring-in-Ring backbone. Cox will install one or two additional two or three inch shadow conduits to enable additional Technology Services by Cox and/or Technology Service Enhancements. Active devices will be limited to one power supply per 300 home average node and no more than five (5) coaxial amplifiers per cascade.

(a) Voice services will be offered in compliance with the ACC's and Bellcore Standards of Service

(b) **RSM Hub and MTC.** New Vistancia hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling future addition of new, and/or dedicated applications. Fiber or HFC connection to Cox's Master Telecommunications Center in Peoria or as designated by Cox engineering.

(c) **Redundancy.** Redundant interconnection with the ILECs, DXCs and ISPs must be provided for system integrity and access to the public network.

(2) **Network Schematic** The Vistancia network schematic will be provided upon completion of the network design. Vistancia must not copy or distribute the single copy provided as it is confidential information of Cox.

(3) **Bandwidth.** The network must be capable of delivery in accordance with the Technology & Service Standards established under the FCC and established franchised commitments under the following:

(a) **Video.** Meet or exceed industry standards for quantity and quality of analog and digital cable programming

(b) **Data.** Data network will be alarmed and monitored at the MTC and SOC.

(c) **Voice.** Minimum average capacity of 2.6 lines per house

(4) **Service Bandwidth Guarantee.** In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node over one month's time, Cox shall at its cost do one or more of the following:

(a) Split the affected node(s) to lessen the number of homes served (but without obligation to split below average of 50 units per node)

(b) Implement alternate modulation or compression techniques if technically practicable

(c) Open additional data channels; and/or

(d) Implement such other actions as Cox deems appropriate to meet the minimums, after consultation with the review by Master Developer.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

(7) provide notice of pending escrow closings.

EXHIBIT D

CATV/Data Service

Pre-Wire Specifications

Vistancia Residential Pre-Wiring Guidelines

INSIDE WIRING

Inside wiring specifications are based on the voice services provided via copper (CAT 5E). Video and high-speed data services are to be provided coax (RG6).

CABLE TV & HIGH SPEED DATA WIRING

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

Hex Crimp or radial compression 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.

Twist-on and reusable type F connectors are not appropriate, as they will create problems for digital video services, disrupting the over all network or causing signal leakage in violation of FCC rules. Thus, push-on, crimp or radial compression connectors must be used.

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

EXHIBIT E

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

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

EXHIBIT F
Insurance Requirements
[to come]

TC-15

From: Arthurs, Tisha (CCI-Phoenix)
Sent: 11/11/2002 11:35:08 AM (Eastern Time)
To: 'rick.andreen@sheahomes.com'; 'byron.augustine@sheshomes.com';
'csmith@sunbeltholdings.com'
CC: 'mhammons@sunbeltholdings.com'; Drake, Paul (CCI-Phoenix)
Attachments: final draft legal approved.doc, final redlines.doc
Subject: Cox Residential Agreement

Gentlemen,
Attached is the final document that will be presented at tomorrow's meeting.
We are promised to have the commercial agreement by tonight so that we have it
for tomorrow too. My apologies that you will not have it to review ahead of
time; however our legal team is having to reinvent the wheel for this one.
Thanks for your patience.

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

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

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this ___ day of _____, 2002, COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea/Sunbelt Holdings, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and rebid therein, as amended from time to time.

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development Phase of Vistancia. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephonic service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish covenants, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

G. Whereas, the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

AGREEMENT

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

- (a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
- (b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox" means Cox.Com, Inc., a Delaware corporation d-b-a Cox Communications, and its permitted successors and assigns.
- (h) "Cox High Speed Internet" means the Internet Service Cox provides.
- (i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (k) "Initial Term" has the meaning provided in Section 2.
- (l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (n) "Marketing Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
- (o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
- (p) "Master Developer" means Shea/Sunbelt Pleasant Point I, L.C., an Arizona limited liability company.
- (q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.
- (r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).
- (s) "Neighborhood Builder" means any person or entity that is engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or planted lots, for the purpose of developing and construction of one or more SFRs thereon.

- (i) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property.
- (ii) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant), or any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (iii) "Performance Default" has the meaning set forth in subsection 10(a)(iii).
- (iv) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements) which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivisions with jurisdiction over Vistancia or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivisions with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereinafter referred to as a "Partial Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (v) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (vi) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view service, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (vii) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (viii) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A.
- (ix) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, coaxial interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (x) "Technology Manager" means the person, entity or entities retained by Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.
- (xi) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber)

(ff) "Term" as applied to the terms of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances, or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public disorder, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ii) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. Easements and Access Rights.

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements, in those portions of the parcels comprising VistaNova which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data

signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia in Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within Vistancia by Cox, at the sole cost and expense of Cox.

(b) **Subdivision Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the easements and use rights provided for in this CMA are established, which easements shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities-SFR, Non-exclusive public utility easements** in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(aa) The SFRs shall have non-exclusive access to public easements and non-exclusive access to private easements.

(bb) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivisions or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(cc) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes, §32-2183, §32-2193.01 or any similar statute heretofore in effect without the prior consent of the then current owner of such SFR.

(dd) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement have the right to enter (by virtue of the easements reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) **Pre-Wire Specifications.** Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(iv) **Post-CMA Closings.** As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(v) **License For Ingress & Egress to Subdivision Parcels.** With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a non-exclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(vi) **Form of Easements.** The easements and other use rights provided for under subsections 3(a) shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(vii) **Repair of Improvements.** Cox shall promptly repair and restore (to its condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox

(a) **Preferred Right to Offer Technology Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or MFUs in Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date to the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligations in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer

Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

(b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area trust within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 4(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia, and the Turnover Date has occurred, i.e. and the Master Developer no longer maintains covenants, conditions and/or restrictions with respect to all Owners Associations within Vistancia. If the Premises are conveyed exclusively or primarily to SFRs, the foregoing compensation as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sunbelt maintains control of the HOA as stated in Vistancia's covenants, conditions and restrictions or maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sunbelt the above mentioned marketing compensation until the applicable Homeowner's Association for the Premises (the "HOA") converts to resident control (a "Conversion"). Upon a Conversion, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the HOA and if the HOA continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the HOA. In the event that Shea/Sunbelt ceases its sales complex at Vistancia (the "Sales Facility") prior to Conversion or if Shea/Sunbelt, in Cox's reasonable opinion, otherwise discontinues any of Shea/Sunbelt's marketing obligations hereunder, Cox shall cease payment of the marketing compensation hereunder.

(c) **Cox Obligations to Provide Technology Services.** Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E.

(i) **CATV.** Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service, provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service, provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household that are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service, provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs, which shall be the responsibility of the applicable Neighborhood Builder(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections (f)(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the 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 (f)(c) and not the Master Developer; (3) installed the pre-wiring in all SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality, standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Rates.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "crmp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) as a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) **Cox High Speed Internet Demo.** One "crmp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox, During the Term of this CMA:**

(i) **Enforcement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent in the Technology Services, excepting only technology services that Cox elects not to or is

whichever of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the internet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

(b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Technology Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) **Calculation and Payment of Marketing Compensation.**

Penetration rates will be based on Technology Services provided by Cox to SFRs built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made as set forth in Exhibit G.

(e) **Reporting by Neighborhood Builders.** During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) **Moves Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription in Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit H 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 VistaVia during the Term of this CMA.

(b) **Required Neighborhood Builder Provision.** Master Developer shall include provision in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within VistaVia 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 VistaVia that has already been sold to Neighborhood Builders and or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible

or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) **Cooperation in Use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plans processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or created for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, required and maintained under this CMA.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistacon.

(f) **Marketing of Apartment Parcels**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

K. Insurance; Indemnification; Waiver of Subrogation.

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restitution of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a) notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance, and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability as any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer, Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

(b) By Cox, Cox hereby represents and warrants to Vistaec as follows:

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the non-defaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (e)

(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. Termination and Partial Termination Rights of Parties after Termination.

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistaia 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 Vistaia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an insured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistaia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistaia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on accounts of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistaia to be built out by that Neighborhood Builder; or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plans which have been approved and accepted by Peoria or other applicable governmental authority, as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-branding and other relationships established under this CMA, including, without limitation:

(i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox.

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) Internet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistaonline" and Master Developer shall remove all of its equipment used in the operation of "Vistaonline" from the property owned by Cox.

12. Dispute Resolution Mechanism.

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

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c).

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate, or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assignments of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including hourly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the non-prevailing party.

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the receipt or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venture or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party in this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and shall be in full force and effect from and after the Agreement Date and to and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of am's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vista's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights; such memorandum shall be in Ich format attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Shea Sumbell Holdings

Address:

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

"Cox"

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

By: _____
Its: _____

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

By: _____
Howard Tigerman
VP of Business Operations

- [PAGE] -

C01454

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____, 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendments(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA.
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer.
- (c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property.
- (d) Buyer and Seller shall advertise Vistaencia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).
- (e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property.
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the A/S plans thereof, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches.
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistaencia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

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

1) Network:

- a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing like ring backbone.
- b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
- c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Technology Services. Advance participation in actual and pre-joint trench coordination efforts with Viasatco and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shallow conduit where appropriate based on anticipated Cox needs.
- d) The provisioning from the pedestal, to the SFR (Single Family Residence) Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and SFR NID. Developer will use reasonable efforts to enable Cox's access to every SFR NID. NID's will be network powered.
- e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.

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

2) Voice Services: Voice services shall be offered in compliance with the JCC Standards of Service, and the CLEC Tariff, with the State of Arizona.

3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all VCMNS/DOCSS standards and provide for data packet encryption.

4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

5) Service Bandwidth Guarantee: In the event that the above are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:

- a) Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
- b) Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimums.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep (an affiliate of Cox Communication) and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaigns before being offered to any other Master Developer Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials.

(c) cooperate in create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(j) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(k) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Florida or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other audio presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology displays as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the:

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homeowners Information folders "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings

EXHIBIT D

CATV/Data Service

Pre-Wire Specifications

Missouri Residential Pre-Wiring Guidelines

INSIDE WIRING

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

CABLE TV & HIGH SPEED DATA WIRING

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

90-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 tag 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 47 CFR (76.5(11), 76.802).

EXHIBIT F

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Pevnia or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for intrusions. Reports on intrusions and other security issues will be provided to Master Developer. Data systems 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 Pevnia or other applicable governmental authority, FCC, ACC, or other applicable governmental entities, and as provided in the agreement with the individual subscribers for the provision of service; and such credits shall be reflected on the following period's billing statement; provided that no such credit shall be available where the outage is due to defects or deficiencies in pre-wiring installed by others or failure of a responsible party other than Cox to properly maintain such pre-wiring or due to customer-owned equipment. In no event shall the service standards or credits or remedies be less than those the subscriber is entitled to under the Franchise. Cox will notify Master Developer of significant planned outages under the same conditions in which Cox is mandated by the Franchise authorities to notify the Franchise authorities or the affected customers of such outages and will advise Master Developer of such planned outages no less than 24 hours in advance of the service outage.

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total licenses passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, guides and tax & license.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

TC-16

From: Curt Smith [csmith@sunbelt holdings.com]
Sent: Tuesday, November 12, 2002 5:53 PM
To: Arthurs, Tisha (CCI-Phoenix)
Cc: Mark Hammons
Subject: RE: redlines



cox final redline.doc

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

Thanks for trying.

-----Original Message-----

From: Arthurs, Tisha (CCI-Phoenix) [mailto:Tisha.Arthurs@cox.com]
Sent: Tuesday, November 12, 2002 4:21 PM
To: Curt Smith
Cc: Mark Hammons
Subject: redlines

Gentlemen,

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

<<CMA.doc>>

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

<<draft from legal send 3rd 10-15-02.doc>> Still does not define "common area"

<<draft from legal send 4th 10-30-02.doc>>

<<final redlines.doc>>

I think these are in the order in which changes were made. You would not have necessarily seen all the changes as we were trying internally to get the agreement tweaked to final.

Legal is gone for the day and I wanted to get you something today. I know after looking at my notes that they do not have one draft with all the changes.

Please bare with me.

Best regards,
Tisha Arthurs
Cox Communications
Sr. Account Executive
6231322-7857

C01463

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

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this _____ day of _____, 2002 COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea/Sunbelt Holdings, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

Deleted: CO-MARKETING
Deleted: in the context of the following text:

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

Deleted: Maricopa County.

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development Phase of Vistancia. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

Deleted: Services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

Deleted: financial ability and the

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operationally feasible.

Deleted: Maricopa County

Deleted: Maricopa County.

Deleted: it

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

G. Whereas, the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
 - (a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.

(b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.

(c) "Agreement Date" means the date first set forth in this CMA.

(d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.

(e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.

(f) "Contractors" means contractors, subcontractors, material providers and suppliers.

(g) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.

(h) "Cox High Speed Internet" means the Internet Service Cox provides.

(i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

(j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.

(k) "Initial Term" has the meaning provided in Section 2.

(l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Visvacia.

(m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.

(n) "Marketing Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.

(o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Visvacia.

(p) "Master Developer" means Shra/Sambel Picturing Fund L.L.C., an Arizona limited liability company.

(q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.

(r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).

(s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pal" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

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Section Break (Not Page)

Deleted: Peoria Village Company

- (i) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property. Deleted: Maricopa County.
- (u) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Deed Grant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (v) "Performance Default" has the meaning set forth in subsection 10(a)(ii).
- (w) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereinafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (x) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (y) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (z) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (aa) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A. Deleted: Maricopa County.
- (bb) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/TI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (cc) "Technology Manager" means the person, entity or entities retained by Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.

(dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2. Deleted: [redacted]

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed. Deleted: (hh)

(ii) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA. Deleted: shall be [redacted] Deleted: is [redacted] Deleted: renewal term [redacted] Deleted: renewal term [redacted]

3. Easements and Access Rights

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

(i) Technology Facilities-Master Developer Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to,

telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) Right of Entry to Install Technology Facilities. During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and non-discriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

~~Deleted: Maricopa County~~

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(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within Vistancia by Cox, at the sole cost and expense of Cox.

(b) Subdivision Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the easements and use rights provided for in this CMA are established, which easements shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) Technology Facilities-SFR. Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(aa) The SFRs shall have non-exclusive access to public easements and non-exclusive access to private easements.

(bb) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(cc) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

(dd) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easements have the right to enter (by virtue of the easements reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this CMA, a nonexclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) **Pre-Wire Specifications.** Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

Deleted: reasonable good faith

(iv) **Post-CMA Closings.** As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) **License For Ingress & Egress to Subdivision Parcels.** With respect to any subdivision parcel that is conveyed by Master Developer in a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or "MFUs" at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall

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part of Cox upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon the completion of the build out of such phase and upon the consent of the Builder. Master Developer's payments will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2001.

(b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia, and the Turnover Date has occurred, i.e. and the Master Developer no longer maintains ~~governance, conditions and/or restrictions with respect to all Owners Associations within Vistancia. If the Premises are composed exclusively or primarily of SFRs, the foregoing compensation as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sunbelt maintains control of the HOA as stated in Vistancia's covenants, conditions and restrictions or maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sunbelt the above mentioned marketing compensation until the applicable Homeowner's Association for the Premises (the "HOA") converts to resident control (a "Conversion"). Upon a Conversion, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the HOA and, if the HOA continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the HOA. In the event that Shea/Sunbelt closes its sales complex at Vistancia (the "Sales Facility") prior to Conversion or if Shea/Sunbelt, in Cox's reasonable opinion, otherwise discontinues any of Shea/Sunbelt's marketing obligations hereunder, Cox shall cease payment of the marketing compensation hereunder.~~

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(c) Cox Obligation to Provide Technology Services. Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) CATV. Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) Data Service. Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

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(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute part of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

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(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs, which shall be the responsibility of the applicable Neighborhood Builders) and the conduit installed by the Master Developer in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(c) and not the Master Developer; (3) installed the pre-wiring in all SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

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(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(c) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to

terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) **Cox High Speed Internet Demo.** One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox.** During the Term of this CMA:

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) Similar Agreements and Co-Branding. Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(b)(iv).

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

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit C, during the Term of this CMA, as set forth in subsection (d), provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) Calculation and Payment of Marketing Compensation.

Penetration rates will be based on Technology Services provided by Cox to SFRs built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made, as set forth in Exhibit C.

(e) Reporting by Neighborhood Builders. During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Technology Services for the period covered by such payments of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the

Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. **Default and Remedies.**

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (c)...

(c) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. Deleted: (c) Master

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 7 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

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(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) No Obstruction. Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder, or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (3) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plans which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) **Intra-net Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistaaciac" and Master Developer shall remove all of its equipment used in the operation of "Vistaacia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in 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 CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligor party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver an such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arms length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandums shall be in tch formatted attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Shea/Sunbelt Holdings

Address:

By: _____

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

"Cox"

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

115:

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

By: _____
Howard Tigerman
VP of Business Operations

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer.
- (c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).
- (e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

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

- 1) Network:
 - a) Distribution plan 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 up-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Technology Services. Advance participation in actual and pre-joint trench coordination efforts with Vectria and other exposed utilities is essential to limit post-joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
 - d) The provisioning from the pedestal to the SFR (Single Family Residential) Demarcation NID (Network Interface Device) shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and SFR NID. Developer will use reasonable efforts to enable Cox's access to every SFR NID. NID's will be network connected.
 - e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.
- 1) Video Services: Meet or exceed industry standards for programming quantity and signal quality of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for intrusions. Data markets shall be compliant with all MCNS/DIGSIS standards and provide for data market encryption.
- 4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Service Standards established under the FCC and established franchise commitments.
- 5) Service Bandwidth Guarantee: In the event that the above are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, once per month's time, Cox shall, at its sole cost, do one or more of the following:
 - a) Split the affected markets to lessen the number of homes served but without obligation to split below an average of 50 units per node.
 - b) Open additional data channels, or
 Implement such other actions, as Cox deems appropriate, to meet the minimums.

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Deleted: (1) Network. Plant activated to 750 MHz 2-way modified HFC Network with a fiber Ring-in-1 Ring backhaul. Cox will install one or two additional two or three inch shadow conduits to enable additional Technology Services by Cox and/or Technology Service Enhancements. Active devices will be limited to one per node supply per 200 home average node and no more than five (5) coaxial amplifiers per cascade.

(a) Voice services will be offered in compliance with the ACC's and Bellcore Standards of Service.

(b) RDM Hub and MTC. New Vectria hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling fiber addition of new, and/or dedicated applications. Fiber or HFC connection to Cox's Master Telecommunications Center in Peoria or as designated by Cox engineering.

(c) Interconnect. Redundant interconnection with the RLECs, DLECs and ILECs will be provided for system integrity and access to the public network.

(d) Network Schematic. The Vectria network schematic will be provided upon completion of the network design. Vectria must not copy or distribute the single copy provided as it is confidential information of Cox.

(e) Bandwidth. The network must be capable of delivery in accordance with the Technology & Service Standards established under the FCC and established franchise commitments under the following:

(1) Video. Meet or exceed industry standards for quantity and quality of analog and digital cable programming.

(2) Data. This network will be shared and monitored at the MTC and SOC.

(3) Voice. Minimum average capacity of 1.6 lines per house.

(4) Service Bandwidth Guarantee. In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node once per month's time, Cox shall at its cost:

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

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Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings.

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EXHIBIT D
CATV/Data Service
Pre-Wire Specifications

Vietnam Residential Pre-Wiring Guidelines

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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 double shield, 60% braid, non-braided type, flame retardant PVC jacket, Meets NEC Article 820 V Ratings, UL Listed).

CABLE TV & HIGH SPEED DATA WIRING

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

90-degree, strain connectors must be used consistent with the manufacturer's recommendation for the particular cable installed. No staples or hard fasteners shall be used to secure coaxial cables.

Deleted: Use Crimp or radial compression

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).

Deleted: Twist-on and reusable type F connectors are not appropriate, as they will create problems for digital video services, disrupting the flow of information or causing signal leakage in violation of FCC rules. Thus, push-on, crimp or radial compression connectors must be used.

EXHIBIT E

Technology & Service Standards

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

Deleted

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

Deleted

- (b) ___ Tariffs on file with the ACC
- (c) ___ Bellcore (including TA-NWT-000909);
- (d) ___ National Cable Television Association; and
- (e) ___ Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

Deleted

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

Deleted

EXHIBIT F

Insurance Requirements

[to come]

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Dry closer a percent of revenue, according to the following scale, for it's marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Photo and Internet. It is exclusive of fees assessed for pay-per-view, movies, long distance, installation, equipment, guides and tax & license.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
91%-95%	18%
96%-100%	21%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

(1) Network. Plant activated to 750 Mhz 2-way modified HFC Network with a fiber Ring-in-Ring backbone. Cox will install one or two additional two or three inch shadow conduits to enable additional Technology Services by Cox and/or Technology Service Enhancements. Active devices will be limited to one power supply per 300 home average node and no more than five (5) coaxial amplifiers per cascade.

(a) Voice services will be offered in compliance with the ACC's and Bellcore Standards of Service

(b) RSM Hub and MTC. New Vistancia hub site located outside Property with primary purpose of serving Property. All nodes connected back to such hub site, enabling future addition of new, and/or dedicated applications. Fiber or HFC connection to Cox's Master Telecommunications Center in Peoria or as designated by Cox engineering.

(c) Redundancy. Redundant interconnection with the ILECs, DXCs and ISPs must be provided for system integrity and access to the public network.

(2) Network Schematic The Vistancia network schematic will be provided upon completion of the network design. Vistancia must not copy or distribute the single copy provided as it is confidential information of Cox.

(3) Bandwidth. The network must be capable of delivery in accordance with the Technology & Service Standards established under the FCC and established franchised commitments under the following:

(a) Video. Meet or exceed industry standards for quantity and quality of analog and digital cable programming

(b) Data. Data network will be alarmed and monitored at the MTC and SOC.

(c) Voice. Minimum average capacity of 2.6 lines per house

(4) Service Bandwidth Guarantee. In the event that the above minimums are determined not to have been met or have subsequently degraded below the minimums for an average of over 10% of the customer base within a node over one month's time, Cox shall at its cost do one or more of the following:

(a) Split the affected node(s) to lessen the number of homes served (but without obligation to split below average of 50 units per node)

(b) Implement alternate modulation or compression techniques if technically practicable

(c) Open additional data channels; and/or

(d) Implement such other actions as Cox deems appropriate to meet the minimums, after consultation with the review by Master Developer.

TC-17

From: Arthurs, Tisha (CCI-Phoenix)
Sent: 11/20/2002 3:35:23 PM (Eastern Time)
To: Drake, Paul (CCI-Phoenix)
Attachments: Curt's Cox redline 11-20-02.doc
Subject: FW: Redlined Agreement

Take a look. It looks as though we are there. Curt made the changes that we talked about and I think we have our final draft. Let me know your thoughts.

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

-----Original Message-----

From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Wednesday, November 20, 2002 11:15 AM
To: Arthurs, Tisha (CCI-Phoenix); Mark Hammons
Subject: Redlined Agreement

Here is a version that includes Mark's and my suggested changes.
<<Curt's Cox redline 11-20-02.doc>>

C01497

From: Arthurs, Tisha (CCI-Phoenix)
Sent: 11/20/2002 3:44:08 PM (Eastern Time)
To: 'csatih@sunbeltholdings.com'
CC: 'mhammons@sunbeltholdings.com'; Drake, Paul (CCI-Phoenix)
Attachments: Curt's Cox redline 11-20-02.doc
Subject: FW: Redlined Agreement

Curt,
I think we are there. Take a look at Recital D, the last line. I don't think this is how you would want it worded. We will build upon first occupancy not when it is feasible. Also Section 5d, the calculation language is in conflict with Exhibit G. Exhibit G is the way it should be worded. I just wanted to bring to your attention as I will have to change 5d to match Exhibit G. I will have to get final approval but it appears as though we may have a deal here.....
Thanks again.

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

-----Original Message-----
From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Wednesday, November 20, 2002 11:15 AM
To: Arthurs, Tisha (CCI-Phoenix); Mark Hammons
Subject: Redlined Agreement

Here is a version that includes Mark's and my suggested changes.
<<Curt's Cox redline 11-20-02.doc>>

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

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this ___ day of _____, 2002, COXCOM, INC., a Delaware corporation d-b-a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea Sunbelt Holdings, d-b-a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAID plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to make available to an amount for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish covenants, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the initial Term, the Technology Services).

G. Whereas the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

AGREEMENT

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

- (a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
- (b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.
- (h) "Cox High Speed Internet" means the Internet Service Cox provides.
- (i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (k) "Initial Term" has the meaning provided in Section 2.
- (l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (n) "Marketing Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
- (o) "Marketing and Promotions Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
- (p) "Master Developer" means Shea/Sumbell Pleasant Point L.L.C., an Arizona limited liability company.
- (q) "MDJ" means residential buildings containing multiple dwelling units for lease, or rent whether detached or attached.
- (r) "Monetary Default" has the meaning set forth in subsection 10(a)(1).
- (s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pod" or platted lots for the purpose of developing and construction of one or more SFRs thereon.

- (i) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property.
- (ii) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (v) "Performance Default" has the meaning set forth in subsection 10(a)(ii).
- (w) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpods" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pod" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereinafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (x) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (y) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (z) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (aa) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A.
- (bb) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, patch, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (cc) "Technology Manager" means the person, entity or entities retained by Master Developer associated with the operation and management of the content on the internet shell page for Vistancia-net.
- (dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(cc) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(gg) "Termination Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public disorder, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ii) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. Easements and Access Rights.

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights in those portions of the parcels comprising Vistaquia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area, to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internet services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that

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Deleted: in conjunction with other public utility providers
Deleted: or other similar use rights
Deleted:
Deleted: easement

neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

Deleted: easement

(ii) Right of Entry to Install Technology Facilities. During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas, established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

Deleted: easement

(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the areas reserved pursuant to this subsection (ii) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within Vistancia by Cox, at the sole cost and expense of Cox.

Deleted: easement

(b) Subdivision Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements or similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the areas, and use rights provided for in this CMA are established, which areas shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) as follows:

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(i) Technology Facilities-SFR. Non-exclusive public utility easements or similar use rights, in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of radio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies, provided:

(a) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owners of a SFR located within such subdivision.

Deleted: (a). The SFRs shall have non-exclusive access to public easements and non-exclusive access to private easements.
Deleted: (a)

(bb) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

Deleted: or

(dd) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement or use right have the right to enter (by virtue of the easements or use rights reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) Non-Exclusive License to Cox. Cox shall have, for the Term of this CMA, a non-exclusive license to use portions of the areas reserved pursuant to this subsection (b) in order to construct, install, repair, replace and maintain the

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Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) **Pre-Wire Specifications.** Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(iv) **Post-LMA Closings.** As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) **License For Ingress & Egress in Subdivision Parcels.** With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved to or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Other Technology Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e., "MDUs" or MFUs of Vistancia, which preferred right shall apply only: (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially as the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon occupancy of the first home in that phase, and upon the consent of the Builder.

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Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

(b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia.

The compensation as set forth in Exhibit G will be paid to Shea/Sumbel for Shea/Sumbel's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sumbel maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sumbel the above mentioned marketing compensation. Upon the transfer of control of the Vistancia Maintenance Corporation to the members, this Agreement shall be assigned by Shea/Sumbel in its entirety to the Vistancia Maintenance Corporation and as long as the Vistancia Maintenance Corporation continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

(c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development in Neighborhood Builders, or to other parties, through easements that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) **CATV.** Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builder, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC, and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household that are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis.

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Deleted: and the Turnover Date has occurred, and the Master Developer no longer maintains ownership, control or any other authority with respect to all Owners Associations within Vistancia.

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Deleted: in the event that Shea/Sumbel does not take steps to Vistancia (the "Sales Facility") prior to the start of the term of this CMA, or if Shea/Sumbel, in Cox's reasonable opinion, otherwise demonstrates any of Shea/Sumbel's material obligations hereunder, Cox shall make payment of the marketing compensation hereunder.

during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and the installation of cabling), which shall be the responsibility of the applicable Neighborhood Builder (in accordance with system architectural and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches) which joint trenches shall conform in the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States Joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility chases or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

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(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "cramp" (non-chargable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer).

(ii) **Cox High Speed Internet Demo.** One "cramp" (non-chargable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer).

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees**

(a) **Exclusive Rights of Cox During the Term of this CMA:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia.

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not

ator into any agreement which permits the co-branding of the internet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(b)(iv).

(b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Technology Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.

(c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) **Calculation and Payment of Marketing Compensation.**

Penetration rates will be based on Technology Services provided by Cox to SFRs built and occupied by residents and not on build-out numbers. The Marketing Incentive Fee will be paid quarterly based on the actual penetration rate for the quarter immediately preceding the quarter for which payment is being made as set forth in Exhibit G.

(e) **Reporting by Neighborhood Builders.** During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of customer subscription to Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) **Required Neighborhood Builder Provisions.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event

shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plans processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States Joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and if applicable, the Neighborhood Builder upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective construction and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox, without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Apartment Parcels**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party herein 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 (in an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer, Master Developer hereby represents and warrants to Cox as follows:

(i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) **No Litigation.** There is no litigation pending on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any portion of the property, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (c)

(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect consequential or punitive damages.

11. Termination and Partial Termination, Rights of Parties after Termination.

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Commissions earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder, or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plans which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) - Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) Internet Disconnection. Cox shall disconnect from the Cox Technology facilities any electronic connections and/or electronic interfaces with respect to "Vistaconnect" and Master Developer shall remove all of its equipment used in the operation of "Vistaconnect" from the property owned by Cox.

12. Dispute Resolution Mechanisms

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

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses, provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed) except as provided in subsections (b) or (c).

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in VistaStar; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer, or (v) to an entity that controls the primary operations where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of covenants 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, representational and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such carrier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venture or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party, in any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, extend or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(1) **Additional Documents.** Each party hereto shall execute and deliver on such additional instruments as may from time to time be necessary, reasonable and appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made as and as of the Agreement Date and as and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party," when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in tech formatted attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

Master Developer

Shea Smelt Holdings

Address:

By: _____
Its: _____

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

"Cox"

Address: 20101 N. 29th Avenue
Phoenix, AZ 85719

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

By: _____
Howard Tigerman
VP of Business Operations

- (PAGE) -

C01518

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreements dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 4(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise VistaVie in all its media and print materials as a "Cox Digital Community," by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the A/S plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within VistaVie being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

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

1) Network:

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

Implement such other actions, as Cox deems appropriate, to meet the minimums.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder, developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cases channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/Builder/Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, postages, advertisements and other collateral materials.

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia's partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party.

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same; and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Texas or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demo's as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings

EXHIBIT D

CATV Data Service

Pre-Wire Specifications

Ventana Residential Pre-Wiring Guidelines

INSIDE WIRING

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

CABLE TV & HIGH SPEED DATA WIRING

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

90-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 47 CFR (76.5(11), 76.802).

EXHIBIT E

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities.

(b) Tariffs on file with the ACC.

(c) Bellcore (including TA-NWT-000909).

(d) National Cable Television Association, and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MANS/DUCSSIS 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 G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, guides and tax & license.

Penetration	Percent
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

TC-18

From: Crosby, Sheila (CCI-Phoenix)
Sent: Tuesday, November 26, 2002 1:38 PM
To: Rizley, Steve (CCI-Phoenix)
Cc: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Tigerman, Howard (CCI-Phoenix)
Subject: FW: Vistancia residential agreement
Attachments: The final agreement.doc

Steve, Attached is the final residential agreement for Vistancia. We are going to schedule a meeting as soon as we get the okay on the commercial agreement.

Sheila Crosby
Vice President of Sales
Desk: 623-322-7922
Fax: 623-322-7918
Mobile: 602-694-0745
Sheila.Crosby@cox.com

-----Original Message-----
From: Arthurs, Tisha (CCI-Phoenix)
Sent: Monday, November 25, 2002 10:07 AM
To: Crosby, Sheila (CCI-Phoenix)
Cc: Drake, Paul (CCI-Phoenix)
Subject: Vistancia residential agreement

Sheila,
We have finished the residential agreement. I am attaching it so that you can review it and forward it on to Steve to review before I schedule us to go out and sign. The commercial agreement sounds like it is about 98% complete. I would like to schedule a time for you, Steve, Paul and myself to go out after the commercial agreement is finished and have both agreements signed at the same time. When I receive the final commercial agreement from Mary I will forward it to you for you and Steve to review as well.



The final agreement.doc (131 K)

Thanks again for all your support during this brutal process.

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

C04636

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

This AGREEMENT FOR TECHNOLOGY FACILITIES AND SERVICE "CMA" is entered into this ___ day of _____, 2002 COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea/Sunbelt Holdings, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner and is developing Vistancia, a master planned community of 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to make available as an amenity for residents of Vistancia the Technology Facilities and the Technology Services to facilitate the timely installation of such video, voice and data and will pay Cox a capital contribution of \$2,000,000.00 to deliver Services at the time of the first home owner occupancy in the initial development Phase of Vistancia. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox has the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to Single Family Residents, i.e. "SFRs" and Multi-Family Units, i.e. "MFUs" in Vistancia upon occupancy of first unit built.

E. Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this CMA to reserve, certain rights and interests and to establish easements, as provided for in this CMA, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to seek the cooperation of Neighborhood Builders in the marketing and promotion of technology services (including, during the Initial Term, the Technology Services).

G. Whereas, the Master Developer further agrees to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

AGREEMENT

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

(a) "Activation Ready" means all Technology Facilities that are necessary to provide Technology Services to a SFR are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.

- (b) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (c) "Agreement Date" means the date first set forth in this CMA.
- (d) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (e) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.
- (h) "Cox High Speed Internet" means the Internet Service Cox provides.
- (i) "Customer Premises Equipment" means Cox-owned, -leased or -for sale equipment installed within the customer's home to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (j) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this CMA.
- (k) "Initial Term" has the meaning provided in Section 2.
- (l) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (n) "Marketing- Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
- (o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
- (p) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company
- (q) "MDU" means residential buildings containing multiple dwelling units for lease or rent whether detached or attached.
- (r) "Monetary Default" has the meaning set forth in subsection 10(a)(6).
- (s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

- (f) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property
- (g) "Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.
- (h) "Performance Default" has the meaning set forth in subsection 10(a)(ii).
- (i) "Plat" means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (ii) a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."
- (j) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs set forth in Exhibit D.
- (k) "Services Revenues" means all gross revenues actually collected from Technology Services provided to SFRs within Vistancia, exclusive only of construction fees, pay-per-view movies, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.
- (l) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.
- (m) "Vistancia" means the SFRs within the master planned community, being developed in Peoria, Arizona, described in Recital A.
- (n) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (o) "Technology Manager" means the person, entity or entities retained by, Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net.

(dd) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to residents at Vistancia.

(ee) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(ff) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(gg) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing an Owners Association, on which Master Developer's voting control of such Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(hh) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ii) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. Easements and Access Rights.

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of

underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this CMA, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas established and other use rights provided for in this CMA, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this CMA, a non-exclusive license to use portions of the areas reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the SFRs within Vistancia by Cox, at the sole cost and expense of Cox.

(b) **Subdivision Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each SFR Lot Plat during the Term of this CMA, it is contemplated that there will be established non-exclusive public utility easements or similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) in connection with the approval of such SFR Lot Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas and use rights provided for in this CMA, and Master Developer shall not approve any such SFR Lot Plat unless the areas and use rights provided for in this CMA are established, which areas shall be delineated on such SFR Lot Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities-SFR.** Non-exclusive public utility easements or similar use rights in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each SFR in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided:

(aa) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of a SFR located within such subdivision.

(bb) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which a SFR is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR.

(cc) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such easement or use right have the right to enter (by virtue of the easements or use rights reserved hereunder) into the interior of any SFR or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this CMA, a nonexclusive license to use portions of the areas reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the

Technology Facilities and provide the Technology Services to all SFRs that may be built within the subdivision that is the subject of such SFR Lot Plat that are served by Cox, at the sole cost and expense of Cox.

(iii) *Pre-Wire Specifications.* Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(iv) *Post-CMA Closings.* As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b). Notwithstanding the same, Master Developer represents and warrants that no other technology service provider has an exclusive agreement with the Master Developer and/or the Builder.

(c) *License For Ingress & Egress to Subdivision Parcels.* With respect to any subdivision parcel that is conveyed by Master Developer to a Neighborhood Builder during the Term of this CMA, to the extent ingress and egress to any such subdivision parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to use its diligent, good faith efforts to secure from the Neighborhood Builder a nonexclusive, irrevocable license during the Term of this CMA for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such subdivision parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) *Form of Easements.* The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) *Repair of Improvements.* Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) *Preferred Right to Offer Technology Services.* During the Term of this CMA, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Dwelling Units, i.e. "MDUs" or MFUs at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Technology Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Technology Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon occupancy of the first home in that phase and

upon the consent of the Builder. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Owners Association or common area tract within Vistancia owned by any such Owners Association, following the Turnover Date for such Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia.

The compensation as set forth in Exhibit G will be paid to Shea/Sunbelt for Shea/Sunbelt's exclusive marketing and sales efforts on behalf of Cox. So long as Shea/Sunbelt maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Shea/Sunbelt the above mentioned marketing compensation. Upon the turnover of control of the Vistancia Maintenance Corporation to the members, this Agreement shall be assigned by Shea/Sunbelt in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation

- (c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available, at a minimum, the following Technology Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA under its License, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) **CATV.** Subject to legal and regulatory constraints, CATV for each resident of any SFR or MDU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Owners Association, to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the residents thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each resident of any SFR or of any MDU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each resident of any SFR that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to SFRs within Vistancia at its sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis

during the Initial Term of this CMA, and that the Technology Services can be provided to each SFR upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and the installation of conduit, which shall be the responsibility of the applicable Neighborhood Builder(s) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFRs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Technology Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement

regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(h) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(i) **Digital CATV.** One "comp" (non-chargeable) digital CATV (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(ii) **Cox High Speed Internet Demo.** One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by an Owners Association and made available by Master Developer for the marketing of Technology Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or

gateway) other than: Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

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

(c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA, as set forth in subsection (d); provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Technology Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Technology Service(s) but unpaid as of the date of such termination.

(d) Calculation and Payment of Marketing Compensation.

Calculation and payment of Marketing Compensation will be made as set forth in Exhibit G.

(e) Reporting by Neighborhood Builders. During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(f) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Technology Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) Required Neighborhood Builder Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

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

(d) Warranty. Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) Construction Manager. Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day- to-day construction issues within Vistancia.

(f) Marketing of Apartment Parcels

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) Required Insurance. During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) Damage or Destruction by Master Developer. In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) Damage or Destruction by Cox. In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) No Liability for Computer Damage. Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) Waiver of Subrogation. Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) Organization and Authority. Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) Due Execution. Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) No Litigation. There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) Compliance with Law. Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) No Litigation. There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) Events of Default. Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) Cox Additional Remedies. In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (c)

(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each SFR provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the SFRs and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to residents of SFRs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of activity commenced prior to termination of the CMA).

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; with a Neighborhood Builder for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Neighborhood Builder; or with any owner or occupant of a SFR for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Owners Association, or any Neighborhood Builder (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should

have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox-;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the utility easements where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

(c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or

legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver any such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as G.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for Technology Facilities and Service as of the date first written above.

"Master Developer"

Shea/Sunbelt Holdings

By: _____

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

Its: _____

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

"Cox"

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

State of Arizona)
County of Maricopa)

Subscribed and sworn to before me this ____ day
of _____, 2002, at Phoenix, AZ.

Notary Public
My Commission Expires: _____

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

By: _____
J. Steven Rizley
General Manager and VP

State of Arizona)
County of Maricopa)

Subscribed and sworn to before me this ____ day
of _____, 2002, at Phoenix, AZ.

Notary Public
My Commission Expires: _____

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Technology Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Technology Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

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

1) Network:

- a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
- b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
- c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Technology Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
- d) The provisioning from the pedestal, to the SFR (Single Family Residence) Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and SFR NID. Developer will use reasonable efforts to enable Cox's access to every SFR NID. NID's will be network powered.
- e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.

- 1) Video Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.
- 2) Voice Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.
- 3) Data Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.
- 4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.
- 5) Service Bandwidth Guarantee: In the event that the above are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:

- a) Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.
- b) Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimums.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

This Exhibit describes the marketing and promotion program (i.e. the Cox Digital Community Marketing & Promotion Program described herein) that shall be undertaken by Cox with respect to the Technology Services in Vistancia, if and to the extent that Master Developer (in its sole discretion) requests such services and support from Cox. Developer shall not be entitled to request any marketing or promotion services from Cox in excess of those set forth in this Exhibit.

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party-co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party cobranded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.

(a) provide literature to the sales office highlighting Cox services

(b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;

(c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;

(d) introduce and coordinate the respective marketing programs, sales and marketing agents;

(e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;

(f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Technology Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Technology Services to the Property;

(m) encourage all parties directly associated with the sale of SFRs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Technology Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for the;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Technology Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Technology Services expected to be a part thereof.

provide notice of pending escrow closings

EXHIBIT D

CATV/Data Service

Pre-Wire Specifications

Vistancia Residential Pre-Wiring Guidelines

INSIDE WIRING

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

CABLE TV & HIGH SPEED DATA WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

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

EXHIBIT F
Insurance Requirements

[to come]

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for it's marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, guides and tax & license.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

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

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

OF

TISHA CHRISTLE

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

ATTACHMENTS

TC-1 Through TC-31

2 of 2

April 5, 2006

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

TC-19

Christle, Tisha (CCI-Phoenix)

Subject: Vistancia meeting
Location: Shea's office at Gainey Ranch
Start: Wed 11/20/2002 7:30 AM
End: Wed 11/20/2002 9:00 AM
Recurrence: (none)
Meeting Status: Meeting organizer

This meeting would be to deliver our final agreements for their review. I'm hoping commercial can be completed by then.
Residential is 98% complete today.

Time and date change AGAIN

• Vistancia Mtg 11/20

• Cont. not w/ May

- struggles w/ participation side

• participation in the Commercial Mtg.

• Commercial agreement

Rich Anderson
Crest Services
Mark Hammer

(Robert)
(602) 694-0980

Public Utility agreement, or similar use rights (global)

• Southern Facilities

71 ~~Mountain~~ Valley, Phury
alligants Mtg. Park

Heidi Kimball
Sun Belt
Holdings

new project

Commercial

2 Basic Concepts - Cont. not on the same page

Revenue Share very important to them

participation very important to Shee

Shee double off PD when building sold

Shee could reduce the amount when business secured.

2 agreements

• 1st tied to Shee Mtg only -

→ 75% participation may not work for Comm'l

- philosophy of Comm'l
- limited to legal

TC-20

Crosby, Sheila (CCI-Phoenix)

From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 11:37 AM
To: Trickey, Linda (CCI-Atlanta)
Cc: Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix);
Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix);
North, Julia (CCI-Phoenix)
Subject: FW: Vistancia Agreement

REDACTED

-----Original Message-----

From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Thursday, November 21, 2002 10:40 AM
To: Kelley, Mary (CCI-Phoenix)
Cc: Mark Hammons; Rick Andreen (E-mail)
Subject: RE: Vistancia Agreement



Vistancia
Commercial draft red.

Attached is a redline with my comments to pass along to the lawyer. These are in addition to having the revenue share piece addressed.
Thanks

-----Original Message-----

From: Kelley, Mary (CCI-Phoenix) [mailto:Mary.Kelley@cox.com]
Sent: Thursday, November 21, 2002 8:54 AM
To: Curt Smith
Cc: Carter, Robert (CCI-Phoenix); Trickey, Linda (CCI-Atlanta); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix)
Subject: Vistancia Agreement

Hi Curt,

I just spoke with the lawyer. She will make the following three changes in the agreement : 1) Term - 20 years 2) delete 4c and 3) add the revenue share piece previously submitted, by end of day today.

When I gave you the commercial agreement last Tuesday, we discussed that it was a draft due to the fact that you requested by November 12th. I asked the lawyer to finalize it so that it would no longer be a draft. She expects to complete that process by end of day tomorrow.

Thank you for your time and patience. As always, please call me at anytime.

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

C01530



DRAFT - FOR DISCUSSION PURPOSES ONLY

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

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ____ day of ____, 2002 between Cox Business Services, LLC ("Cox") on behalf of its affiliates, and Shea/Sunbelt Holdings Pleasant Point LLC, an Arizona limited liability company, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to sell commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone Cox or it's affiliated entities will make such services available to commercial buildings in Vistancia upon the occupancy of the first building constructed in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements or similar use rights, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement or similar use right and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

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AGREEMENT

1. Definitions.

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

(a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.

(b) "Agreement Date" means the date first set forth in this Agreement.

(c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.

(d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.

(e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.

(f) "Contractors" means contractors, subcontractors, material providers and suppliers.

(g) "Cox High Speed Internet" means the Internet Service Cox provides.

(h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

(i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

(j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.

(k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.

(l) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company

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

(n) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.

(o) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."

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

(q) "Vistancia" means the commercial Buildings within the master planned community being developed in Peoria, Arizona, described in Recital A.

(r) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, 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.

(s) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.

(t) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(u) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty ten (2010) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for two successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. Easements and Access Rights.

(a) Master Plan Utility (Technology Facilities) Easements & Access Rights. During the application and processing by Master Developer of each Parcel Plat during the Term of this Agreement, it is contemplated that Master Developer will establish non-exclusive public utility easements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the easement-area, in conjunction with other public utility

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providers) or other similar use rights in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, as follows:

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) Right of Entry to Install Technology Facilities. During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas easements established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the areas easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

(b) Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas easements and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the areas easements and use rights provided for in this Agreement are established, which areas easements shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) Technology Facilities. Non-exclusive public utility easements or other similar use rights in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) Non-Exclusive License to Cox. Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the areas easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be

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built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(iii) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(c) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the areas easements and other rights reserved for or granted to Cox pursuant to this Section 3, ~~except for Backbone Conduit which shall be maintained and repaired by Master Developer.~~

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Technology Services.** ~~Once Cox has a minimum number of subscribers to make the provision of Technology Services economically feasible, Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D: and upon occupancy of the first such building in Vistancia.~~

(i) **CATV.** Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds

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the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof, ~~when it is technically, economically and operationally feasible to do so.~~

(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per user household, but in no event shall Cox be required to exceed the number of telephone numbers per user household than are available from time to time from the Local Exchange Carrier.

(iv) Data Service. Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services will ~~can~~ be provided to each tenant upon initial occupancy.

(i) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) Selection of Contractors. Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

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(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights**

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer, Master.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

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(a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) Required Owner Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or other similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) Cox Trenching Obligations. Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

(f) Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least ~~six~~ twelve (6+2) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

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(b) *Timely Delivery of Plans.* At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) *Governmental Permits.* Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) *Warranty.* Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) *Construction Manager.* Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) *Marketing of Commercial Buildings*

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. *Insurance; Indemnification; Waiver of Subrogation.*

(a) *Required Insurance.* During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) *Damage or Destruction by Master Developer.* In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) *Damage or Destruction by Cox.* In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) *No Liability for Computer Damage.* Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically

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generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting 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).

9. Representations and Warranties

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

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

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

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

(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

(vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

(i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required

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licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(c).

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(c) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements or similar use rights acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to

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deliver Technology Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements or similar use rights. No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner; or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements or similar use rights, which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements or similar use rights, granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

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(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer, or (v) to an entity that controls the easements or rights in the areas where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a

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document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) Amendments. No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

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overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

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(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.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ___.

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

Shea/Sunbelt Pleasant Point LLC

Cox Business Services, LLC

By: _____

By: _____

Its: _____

Robert Carter
Vice President

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

and required copy to:
2095 W. Pinnacle Peak Rd., Suite 110
Phoenix, AZ 85027
Phone: (623)322-7472
Facsimile: (623)322-7983

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.

(b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.

(c) Owner shall submit its construction plans to Cox at least six twelve (6+2) months prior to Cox commencing installation of the Technology Facilities.

(d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner;

(e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;

(f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;

(h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities. At Master Developer's sole discretion, if such capital contribution is required, Master Developer may terminate this Agreement.

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

1) Network:

To Be Determined

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

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data 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.

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EXHIBIT E

Insurance Requirements

To Be Determined

From: Kelley, Mary (CCI-Phoenix)
Sent: 11/21/2002 12:37:12 PM (Eastern Time)
To: Trickey, Linda (CCI-Atlanta)
CC: Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Attachments: Vistancia commercial draft redline 11-21-02.doc
Subject: FW: Vistancia Agreement

Redacted

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Curt Smith [mailto:csmith@sunbeltholdings.com]
Sent: Thursday, November 21, 2002 10:40 AM
To: Kelley, Mary (CCI-Phoenix)
Cc: Mark Hammons; Rick Andreen (E-mail)
Subject: RE: Vistancia Agreement

Attached is a redline with my comments to pass along to the lawyer. These are in addition to having the revenue share piece addressed.
Thanks

-----Original Message-----

From: Kelley, Mary (CCI-Phoenix) [mailto:Mary.Kelley@cox.com]
Sent: Thursday, November 21, 2002 8:54 AM
To: Curt Smith
Cc: Carter, Robert (CCI-Phoenix); Trickey, Linda (CCI-Atlanta); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix)
Subject: Vistancia Agreement

Hi Curt,

I just spoke with the lawyer. She will make the following three changes in the agreement : 1) Term - 20 years 2) delete 4c and 3) add the revenue share piece previously submitted, by end of day today.

When I gave you the commercial agreement last Tuesday, we discussed that it was a draft due to the fact that you requested by November 12th. I asked the lawyer to finalize it so that it would no longer be a draft. She expects to complete that process by end of day tomorrow.

Thank you for your time and patience. As always, please call me at anytime.

Mary Kelley
Commercial Access Account Manager

C03193

5/14/82

6 Cox Business Services
Work 623-322-7472
Fax 623-322-7983

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

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2002 between Cox Business Services, LLC ("Cox") on behalf of its affiliates, and Shea Sunbelt Holdings Pleasant Point LLC, an Arizona limited liability company, d/b/a _____, a _____ corporation, hereinafter "Master Developer."

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to said commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and Cox or its affiliated entities will make such services available to commercial buildings in Vistancia upon the occupancy of the first building constructed in Vistancia.

Deleted: each entity will make the telephone
Deleted: when it is both technically, economically and operationally feasible

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements or similar use rights, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement or similar use right and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

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AGREEMENT

1. Definitions.

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

- (a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox High Speed Internet" means the Internet Service Cox provides.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company
- (m) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property
- (n) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.
- (o) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction

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over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."

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

(q) "Vistancia" means the commercial buildings within the master planned community being developed in Pima, Arizona, described in Recital A.

(r) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pods, cross connect panels, fiber/FI interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.

(s) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.

(t) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).

(u) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for two successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term." Deleted: no Deleted: 10

3. Easements and Access Rights.

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

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non-exclusive right to place Technology Facilities within the area, in conjunction with other public utility providers, in connection with the approval of such Plat by Peoria and/or other applicable governmental authority, including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, as follows:

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Deleted: or other similar use rights

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area, to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

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(ii) Right of Entry to Install Technology Facilities. During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation thereof of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

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(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the areas reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

Deleted: easements

(b) Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas, and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the areas, and use rights provided for in this Agreement are established, which areas shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

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(i) Technology Facilities. Non-exclusive public utility easements or other similar use rights in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) Non-Exclusive License to Cox. Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the areas reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace

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and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(iii) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(e) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the areas, and other rights reserved for or granted to Cox pursuant to this Section 3.

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4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D, and upon occupancy of the first such building in Vistancia.

Deleted: Once Cox has a minimum number of subscribers to make the provision of Technology Services economically feasible.
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(i) **CATV.** Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service, provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical

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area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof.

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(iii) Telephone Service. Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, L.L.C.; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per user, but in no event shall Cox be required to exceed the number of telephone numbers per user that are available from time to time from the Local Exchange Carrier.

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(iv) Data Service. Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services will be provided to each tenant upon initial occupancy.

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(i) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pro-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(c) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pro-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 Pro-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pro-Wire Specifications.

(ii) Selection of Contractors. Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(iii) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

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(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights**

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia.

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer. Master.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and

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implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or other similar use rights established pursuant to Plans processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

(f) **Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit** according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

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(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
- (ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Commercial Buildings**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically

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generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(c) Waiver of Subrogation. Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

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

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

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

(iv) No Litigation. There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

(vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

(i) Organization and Authority. Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required

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licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

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(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(e).

(e) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

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(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements or similar use rights acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements or similar use rights. No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner, or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements or similar use rights, which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements or similar use rights granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to

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the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any

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entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the easements or rights in the areas where the Technology Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

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

14. Miscellaneous

(a) Amendments. No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) Unenforceability. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

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(c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any 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

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another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(0) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ___.

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

Shea Sunbelt Pleasant Point LLC

Cox Business Services, LLC

By: _____

By: _____

Its: _____

Robert Carter
Vice President

and required copy to
6720 N. Scottsdale Road

and required copy to
2095 W. Pinnacle Peak Rd., Suite 110

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

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

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated 2/2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(n) of the Agreement.

(b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.

(c) Owner shall submit its construction plans to Cox at least ~~six (6) months~~ prior to Cox commencing installation of the Technology Facilities.

Deleted: twelve

Deleted: 12

(d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner;

(e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement), within any Building developed by Owner within Vistancia;

(f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;

(h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities. At Master Developer's sole discretion, if such capital contribution is required, Master Developer may terminate this Agreement.

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

1) Network:

To Be Determined

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

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

- (b) Tariffs on file with the ACC
- (c) Bellcore (including TA-NWT-000909);
- (d) National Cable Television Association; and
- (e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data networks 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.

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EXHIBIT E

Insurance Requirements

To Be Determined

-(PAGE)-

C03217

A	
1	Vistancia
2	Summary of Changes from JEGB
3	
4	
5	
6	
7	Added calculation of Shea IRR on CF Summary

TC-21

Crosby, Sheila (CCI-Phoenix)

From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 4:45 PM
To: 'csmith@sunbeltholdings.com'
Cc: Trickey, Linda (CCI-Atlanta); Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Subject: FW: Vistancia

Hi Curt,

As promised, I am forwarding the changes that we discussed previously: the term mirrors the residential agreement, 4 c. is deleted and the Revenue Share is included. Linda added number 9.

Please review the entity name in the following agreement as Linda pointed out it is different from the residential agreement but know that may be the case.

Linda is scheduled to look at the comments you forwarded tomorrow.

Please review the highlighted areas at your earliest convenience and let me know if you have any comment(s) so I can review as soon as possible.

Thank you.



Vistancia with 3
changes 11-21...

Mary Kelley

Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

—Original Message—

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, November 21, 2002 3:40 PM
To: Kelley, Mary (CCI-Phoenix)
Subject: Vistancia

REDACTED

C01579

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

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2002 between Cox Business Services, LLC ("Cox") on behalf of its affiliates, located at _____ and Shea/Sunbelt Pleasant Point LLC, an Arizona limited liability company, located at _____ ("Master Developer").

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to sell commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to commercial buildings in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

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AGREEMENT

1. Definitions.

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

- (a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox High Speed Internet" means the Internet Service Cox provides.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company
- (m) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by their successors and assigns) for the transmission or distribution of the Technology Services through the Cox Network located within Vistancia to the commercial buildings only, including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to Tenant, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, revenue from residential dwellings (such as apartments, condos, and single family homes), interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (n) "Official Records" means the official records of the City of Peoria, Arizona, pertaining to real property

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- (o) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.
- (p) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (q) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in set forth in Exhibit C.
- (r) "Vistancia" means the commercial Buildings within the master planned community being developed in Peoria, Arizona, described in Recital A.
- (s) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (t) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.
- (u) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).
- (v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The

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Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. Easements and Access Rights.

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

(i) **Technology Facilities-Master Developer.** Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

(b) **Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the easements and use rights provided for in this Agreement are established, which easements shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities.** Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other

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enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(iii) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(c) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3, except for Backbone Conduit which shall be maintained and repaired by Master Developer.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D.

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(i) **CATV.** Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services can be provided to each tenant upon initial occupancy.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

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(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Exclusive Marketing Rights

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing,

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Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(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).

(f) **Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.**

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least twelve (12) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to offset the cost of construction and/or materials for Cox. If Builder chooses the

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first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
- (ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Commercial Buildings**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

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8. **Payment Obligations.** In consideration for the marketing assistance and the construction of the Backbone Conduit, and the performance of its obligations under this Agreement, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee on the following scale based on the MRC received from Tenants within Master Developer's commercial buildings through the provision of Technology Services:

<u>MRC Revenue Received by Cox</u>	<u>Applicable Percentage Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the MRC attributed to Master Developer's commercial buildings reaches a higher Percentage Fee payment threshold all MRC shall be entitled to the higher payment percentage.

8.1 **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.

8.2 **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Technology Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may elect, or be required by federal or state law, to lease or allow use of, portions of the Cox Network to Third Party Providers to allow such providers to provision telecommunications services via the Cox Network to Tenants in Master Developer's Buildings or Third Party Buildings. In no event shall the compensation received by Cox from such Third Party Providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing Third Party Providers to deliver telecommunication services or communication signals via the Cox Network shall not be deemed an assignment, sale or transfer of the Cox Network or a delegation or assignment of Cox's rights under Section ___ of this Agreement.

10. **Insurance, Indemnification, Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit E.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this Agreement, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

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(c) Waiver of Subrogation. Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

11. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

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

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

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

(iv) No Litigation. There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

(vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

12. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(e).

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(c) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements.

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No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner; or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

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(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such 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

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Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

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

16. Miscellaneous.

(a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered 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

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personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

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(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.

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ___

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

Shea/Sunbelt Pleasant Point LLC

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

By: _____
Its: _____

By: _____
F. Steven Rizley
Its: Vice President and General Manager

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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

Address:
2095 West Pinnacle Peak Road
Suite 110
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

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

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.

(b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.

(c) Owner shall submit its construction plans to Cox at least twelve (12) months prior to Cox commencing installation of the Technology Facilities.

(d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner;

(e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;

(f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);

(g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;

(h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities.

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

1) Network:

To Be Determined

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

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

- DRAFT - FOR DISCUSSION PURPOSES ONLY

EXHIBIT D

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

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

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EXHIBIT E

Insurance Requirements

To Be Determined

TC-22

Kelley, Mary (CCI-Phoenix)
From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 4:54 PM
To: Walker, Jeffrey (CCI-Phoenix)
Subject: RE: Vistancia

Mary Kelley

Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Walker, Jeffrey (CCI-Phoenix)
Sent: Thursday, November 21, 2002 4:45 PM
To: Kelley, Mary (CCI-Phoenix)
Cc: North, Julia (CCI-Phoenix)
Subject: RE: Vistancia

Great work Mary!

Adelante,
Jeffrey Walker
Sales Manager
Cox Business Services
2095 West Pinnacle Peak Rd., Suite 110
Phoenix, AZ 85027
623-322-7475
623-322-7496 (fax)

-----Original Message-----

From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 4:45 PM
To: 'csmith@sunbeltholdings.com'
Cc: Trickey, Linda (CCI-Atlanta); Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Subject: FW: Vistancia

Hi Curt,

As promised, I am forwarding the changes that we discussed previously: the term mirrors the residential agreement, 4 c. is deleted and the Revenue Share is included. Linda added number 9.

Please review the entity name in the following agreement as Linda pointed out it is different from the residential agreement but know that may be the case.

Linda is scheduled to look at the comments you forwarded tomorrow.

Please review the highlighted areas at your earliest convenience and let me know if you have any comment(s) so I can review as soon as possible.

Thank you.

<< File: Vistancia with 3 changes 11-21.doc >>

Mary Kelley

Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, November 21, 2002 3:40 PM
To: Kelley, Mary (CCI-Phoenix)
Subject: Vistancia

Changes are highlighted in yellow.

<< File: Vistancia commercial draft.doc >>

Linda Trickey
Corporate Counsel
Cox Communications, Inc.
tel: (404) 269-7496
fax: (404) 843-5845
email: linda.trickey@cox.com

Kelley, Mary (CCI-Phoenix)

From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 4:45 PM
To: 'csmith@sunbelt Holdings.com'
Cc: Trickey, Linda (CCI-Atlanta); Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Subject: FW: Vistancia

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Thank you.



Vistancia with 3
changes 11-21...

Mary Kelley

Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, November 21, 2002 3:40 PM
To: Kelley, Mary (CCI-Phoenix)
Subject: Vistancia

Changes are highlighted in yellow.



Vistancia
mmmercial draft.doc.

Linda Trickey
Corporate Counsel
Cox Communications, Inc.
tel: (404) 269-7496
fax: (404) 843-5845
email: linda.trickey@cox.com

Kelley, Mary (CCI-Phoenix)
From: Kelley, Mary (CCI-Phoenix)
Sent: Thursday, November 21, 2002 11:37 AM
To: Trickey, Linda (CCI-Atlanta)
Cc: Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Subject: FW: Vistancia Agreement

REDACTED

---Original Message---

From: Curt Smith [mailto:csmith@sunbelt holdings.com]
Sent: Thursday, November 21, 2002 10:40 AM
To: Kelley, Mary (CCI-Phoenix)
Cc: Mark Hammons; Rick Andreen (E-mail)
Subject: RE: Vistancia Agreement



Vistancia
Commercial draft red.

Attached is a redline with my comments to pass along to the lawyer. These are in addition to having the revenue share piece addressed.

Thanks

---Original Message---

From: Kelley, Mary (CCI-Phoenix) [mailto:Mary.Kelley@cox.com]
Sent: Thursday, November 21, 2002 8:54 AM
To: Curt Smith
Cc: Carter, Robert (CCI-Phoenix); Trickey, Linda (CCI-Atlanta); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix)
Subject: Vistancia Agreement

Hi Curt,

I just spoke with the lawyer. She will make the following three changes in the agreement : 1) Term - 20 years 2) delete 4c and 3) add the revenue share piece previously submitted, by end of day today.

When I gave you the commercial agreement last Tuesday, we discussed that it was a draft due to the fact that you requested by November 12th. I asked the lawyer to finalize it so that it would no longer be a draft. She expects to complete that process by end of day tomorrow.

C01607

Thank you for your time and patience. As always, please call me at anytime.
Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

From: Kelley, Mary (CCI-Phoenix)
Sent: 11/21/2002 5:44:33 PM (Eastern Time)
To: 'csmith@sunbeltholdings.com'
CC: Trickey, Linda (CCI-Atlanta); Housen, Heather (CCI-Atlanta); Carter, Robert (CCI-Phoenix); Walker, Jeffrey (CCI-Phoenix); Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix); Crosby, Sheila (CCI-Phoenix); North, Julia (CCI-Phoenix)
Attachments: Vistancia with 3 changes 11-21.doc, Vistancia commercial draft.doc
Subject: FW: Vistancia

Hi Curt,

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Linda is scheduled to look at the comments you forwarded tomorrow.

Please review the highlighted areas at your earliest convenience and let me know if you have any comment(s) so I can review as soon as possible.

Thank you.

Mary Kelley
Commercial Access Account Manager
Cox Business Services
Work 623-322-7472
Fax 623-322-7983

-----Original Message-----

From: Trickey, Linda (CCI-Atlanta)
Sent: Thursday, November 21, 2002 3:40 PM
To: Kelley, Mary (CCI-Phoenix)
Subject: Vistancia

Linda Trickey
Corporate Counsel
Cox Communications, Inc.
tel: (404) 269-7496
fax: (404) 843-5845
email: linda.trickey@cox.com

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

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2002 between Cox Business Services, LLC ("Cox") on behalf of its affiliates, located at _____ and Shea/Sunbelt Pleasant Point LLC, an Arizona limited liability company, located at _____ ("Master Developer").

RECITALS

A. Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Master Developer desires to grant Cox access to Vistancia to install its Technology Facilities to provide the Technology Services to sell commercial services.

C. Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide to Vistancia the Technology Services.

D. Cox and its affiliated entities have the franchised right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia, and an affiliated company has the legal right to provide Telephone Service to Vistancia and such entity will make the telephone service available to commercial buildings in Vistancia when it is both technically, economically and operationally feasible.

E. Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. In order to provide for the orderly and uniform development of technology facilities (including the Technology Facilities) in Vistancia, Master Developer has reserved, and intends during the Term of this Agreement to reserve, certain rights and interests and to establish easements, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of technology facilities (including the Technology Facilities) and otherwise to require Owners to build certain facilities and to cooperate in the marketing and promotion of technology services (including the Technology Services).

G. Master Developer further agrees to install conduit as set forth in this Agreement and to grant to Cox an easement and access to the Premises for the installation of the Cox Facilities and provision of Services.

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

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AGREEMENT

1. Definitions

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

- (a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Master Developer, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Technology Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.
- (e) "CATV" means cable television service, whether analog or digital, except where limited in a specific context.
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "Cox High Speed Internet" means the Internet Service Cox provides.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Technology Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "License" means the right that Cox holds from Peoria or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Developer" means Shea/Sunbelt Pleasant Point L.L.C., an Arizona limited liability company

(m) "Monthly Recurring Revenue" or "MRR" shall mean all revenues received by Cox (or by their successors and assigns) for the installation, maintenance, and distribution of the Technology Services through the Cox Network located within Vistancia to the commercial buildings only, including without limitation, charges for internet connectivity, and fees and charges for providing equipment to tenants but excluding, of deducting, from such revenues, the same (where included) for the installation, maintenance, and distribution of the Technology Services through the Cox Network located within Vistancia to residential dwellings (such as apartments, condos, and single family homes), interest charges, bad debts, franchise fees, or other governmental charges, surcharges, or other governmental charges, or other governmental authorized assessments (however described) and network access charges.

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

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- (o) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial Buildings thereon.
- (p) "Plat" means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (q) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in set forth in Exhibit C.
- (r) "Vistancia" means the commercial Buildings within the master planned community being developed in Peoria, Arizona, described in Recital A.
- (s) "Technology Facilities" means all on-site and off-site equipment installed for and/or used in the distribution of Technology Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises equipment.
- (t) "Technology Services" means the telephone service, Internet Service, CATV, and any additional communications services delivered through the Technology Facilities that from time to time are available from or through Cox to tenants at Vistancia.
- (u) "Telephone Service" means local telephone service with access to toll and long distance telephone international service provided by or through a Cox affiliate or third party (the long distance carrier to be selected by the subscriber).
- (v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

2. ~~Renewal Term~~

~~The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years commencing on the Commencement Date and ending on the Initial Term. This Agreement will automatically renew for successive terms of five (5) years each on the Renewal Term unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the initial term (or the renewal term, whichever is applicable). The Initial Term~~

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~~and any Renewal Term are subject to early termination as provided in Sections 6 and 7 of this Agreement. The initial Term and any Renewal Term are collectively referred to as the Term.~~

3. Easements and Access Rights.

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

(i) **Technology Facilities-Master Developer.** Non-exclusive public utility easements, in those portions of the parcels comprising Vistancia which extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such easement to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the easement area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) **Right of Entry to Install Technology Facilities.** During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the easements established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

(iii) **Non-Exclusive License to Cox.** Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the easements reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

(b) **Utility (Technology Facilities) Easements & Access Rights.** During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements (which shall include a non-exclusive right to place Technology Facilities within the easement area, in common with other public utility providers) or other similar use rights in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the easements and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the easements and use rights provided for in this Agreement are established, which easements shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities.** Non-exclusive public utility easements in such locations as Master Developer shall reasonably determine, within the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and

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equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the easements reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Cox Backbone Conduit which is installed at Master Developer's cost).

(iii) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Owners, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A.

(c) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to a Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

(e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the easements and other rights reserved for or granted to Cox pursuant to this Section 3, except for Backbone Conduit which shall be maintained and repaired by Master Developer.

4. Technology Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Technology Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Technology Services (including future technology comprising all or part of the Technology Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Technology Services to tenants of the Buildings.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Technology Services.** Cox agrees to make available the following Technology Services to tenants of the Buildings, which Technology Services shall be provided by Cox in accordance with the standards set forth in Exhibit D.

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(i) **CATV.** Subject to legal and regulatory constraints, CATV for each tenant that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the CATV Technology Services within a reasonable time at no cost to Master Developer or any Owners to keep CATV at a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future technology services comprising all or a portion of the Technology Services to Vistancia and the tenants thereof, when it is technically, economically and operationally feasible to do so.

(iii) **Telephone Service.** Subject to legal and regulatory constraints, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to all such building and Cox shall meet reasonable customer requirements for individual telephone numbers per household; but in no event shall Cox be required to exceed the number of telephone numbers per household that are available from time to time from the Local Exchange Carrier.

(iv) **Data Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Data Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Technology Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Technology Services can be provided to each tenant upon initial occupancy.

(i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the Buildings, which shall be the responsibility of the applicable Owner(s)) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the rights and interests contemplated under Section 3 of this Agreement. However, Cox shall have no obligation to install the Technology Facilities or deliver the Technology Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) installed the pre-wiring in all Buildings in compliance with the Pre-Wire Specifications attached as Exhibit C; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit C) for all applicable Buildings; and (5) with respect to any portion of Vistancia conveyed to a Owner prior to the execution of this Agreement, had all pre-wiring installed by the Owner reviewed and accepted as in compliance with the Pre-Wire Specifications.

(ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

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(iii) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Technology Services (subject to legal and regulatory restraints), in accordance with applicable law.

(iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.

(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(e) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(f) **Individual Subscriber Basis.** Unless this Agreement is amended in writing, the Technology Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Technology Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

(g) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Technology Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Technology Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Technology Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. Exclusive Marketing Rights

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Technology Services to Vistancia;

(ii) **Marketing and Promotion of Technology Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Technology Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer. Master.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of technology services equivalent to the Technology Services, excepting only technology services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing,

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Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Technology Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed to such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

(f) **Master Developer shall install for Cox, at Master Developer's sole cost and expense, the Backbone Conduit according to the specifications provided by Cox. Cox has a right of first refusal to use the Backbone Conduit during the Term of this Agreement and during any additional time period that Cox is providing any Technology Services to tenants of the Building.**

7. Technology Facilities Cooperation & Coordination by Cox.

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least twelve (12) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to

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offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

(c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.

(d) **Warranty.** Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same; and

(ii) Shall provide the Technology Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

(e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) **Marketing of Commercial Buildings**

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Technology Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

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(e) Waiver of Subrogation. Notwithstanding any contrary provision of this Agreement, each party to this Agreement hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

II. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

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

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

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

(iv) No Litigation. There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

(vi) No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of technology services comparable to Cox's preferred provider status with respect to the Technology Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

12. Default and Remedies.

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(c).

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(c) **Master Developer Additional Remedies.** In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination.** After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology

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(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages; obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

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(i) Cessation or Interruption of Technology Service. In the event Cox is unable or otherwise fails to provide CATV or Internet Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Technology Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Technology Service.

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Technology Services, or any component thereof (e.g., Data Services, CATV, Telephone) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Technology

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Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such easements. No termination of the Agreement shall terminate or restrict in any way the rights that Cox has or may have under its License or by applicable law or regulation to offer and provide Technology Services to tenants of the Buildings in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology services provider, provided, however, that doing so will release Cox from any further obligation to provide Technology Services to any portion of Vistancia not previously entitled to receive the Technology Services under the terms of this Agreement.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; with a Owner for the provision of Technology Facilities or Technology Services to the phase or portion of Vistancia to be built out by that Owner; or with any tenant of a Building for the provision of one or more Technology Services. In addition, and regardless of the reason for termination, Cox shall continue to have (i) such access rights which have been provided by Peoria or other applicable governmental authority with respect to any streets and rights of way delineated under any Plats which have been approved and accepted by Peoria or other applicable governmental authority as of the date of such termination and (ii) such easements which have been established for the non-exclusive use of Cox.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Technology Services to present or future subscribers for any Technology Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

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(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. **Assignment.**

(a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer. Any such

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assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

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

16. Miscellaneous.

(a) **Amendments.** No amendment of this Agreement shall be effective, unless made in writing executed by both Master Developer and Cox.

(b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered 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.

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(f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contractor, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and

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

(0) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights, such memorandum shall be in the format attached as Exhibit ___

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

Shea/Sunbelt Pleasant Point LLC

Cox Communications, a Delaware corporation
d/b/a Cox Communications/Phoenix

[Redacted signature block for Shea/Sunbelt Pleasant Point LLC and Cox Communications/Phoenix]

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Address: [REDACTED] Address: [REDACTED]
620 N. Scottsdale Road [REDACTED] 9955 West Paraiso Peak Road [REDACTED]
Suite 300 [REDACTED] Suite 141 [REDACTED]
Scottsdale, AZ 85253 [REDACTED] Phoenix, AZ 85027 [REDACTED]
Phone: (480) 305-0720 [REDACTED] Phone: (623) 322-7837 [REDACTED]
Facsimile: (480) 305-1110 [REDACTED] Facsimile: (623) 322-7913 [REDACTED]

and required copy to [REDACTED] and required copy to [REDACTED]
3300 N. Camelback Drive [REDACTED] 1100 Camelback Drive [REDACTED]
Suite 370 [REDACTED] Phoenix, AZ 85019 [REDACTED]
Scottsdale, AZ 85253 [REDACTED] Attn: General Counsel [REDACTED]
Phone: (480) 362-7600 [REDACTED]
Facsimile: (480) 362-8800 [REDACTED]

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated _____ 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

- (a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.
- (b) Owner shall install for Cox, at Owner's sole cost and expense, _____ size conduit ("Cox Building Conduit") running from the Cox Backbone Conduit separately to each commercial Building constructed by Owner. Cox Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Technology Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Cox Building Conduit for its Technology Facilities to provide Technology Services.
- (c) Owner shall submit its construction plans to Cox at least twelve (12) months prior to Cox commencing installation of the Technology Facilities.
- (d) Owner shall observe the Pre-Wire Specifications set forth in Exhibit C of the Agreement and shall install the material referenced therein, in accordance therewith, in each Building constructed by Owner on the Property, all at the sole cost and expense of Owner;
- (e) Cox shall have the exclusive right to market and promote Technology Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;
- (f) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (g) Cox shall have the preferred right to provide Technology Services to each Building built by Owner within Vistancia;
- (h) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (i) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement. If Master Developer's plans change subsequent to execution of this Agreement, Cox may require Master Developer to make a capital contribution toward the installation and construction of the Technology Facilities.

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

1) Network:

To Be Determined

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

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EXHIBIT C

CATV/Data Service

Pre-Wire Specifications

To be Determined

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EXHIBIT D

Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including TA-NWT-000909),

(d) National Cable Television Association; and

(e) Data Network Standards.

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

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

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EXHIBIT E

Insurance Requirements

To Be Determined

- [PAGE] -

CONFIDENTIAL

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CONFIDENTIAL

TC-23

From: Mark Hammons [mhammons@sunbelt Holdings.com]
Sent: Monday, December 23, 2002 5:37 PM
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Subject: Vistancia



CommonServicesEaton-ExclusiveLicenAppendxA-Definitio
sementsandRes... eAgreement(... nsandInterp...

Here are the remaining documents described in my previous email. The following is our attorneys contact information

Joe Montel
Montel Law Firm, P.C.
(317) 569-1680 phone
(317) 569-1690 fax
jmmf@ameritech.net

I look forward to your comments,

Mark <<CommonServicesEasementsandRestrictions(Vistancia) Version 2... 12-23-02.doc>>
<<Non-ExclusiveLicenseAgreement(Vistancia) Version 2...12-23-02.doc>> <<AppendixA-
DefinitionsandInterpretations(Vistancia) Version 2... 12-23-02.doc>>

C01655

Cross Reference

This instrument burdens real estate located in [insert] County, state of [insert]. The last deed conveying the burdened real estate was recorded in the office of the Recorder of [insert] County as Instrument Number [insert].

COMMON SERVICES EASEMENTS AND RESTRICTIONS

"Effective Date": December __, 2002

"Grantor": Corporate/Company Name: Shea Sunbelt Pleasant Point, LLC

 State of Organization: Delaware

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

"Grantee": Company Name:

 State of Organization:

 Address:

THIS COMMON SERVICES EASEMENTS AND RESTRICTIONS (this "Easement") is made and entered into on the Effective Date by and among the Grantor and the Grantee. Capitalized terms not otherwise defined in this Easement shall have the meanings ascribed to them in Appendix A attached hereto and by this reference incorporated in this Easement. The terms or phrases "Effective Date", "Grantor" and "Grantee" shall have the meanings ascribed to them above.

ARTICLE I - RECTALS

Section 1.01. WHEREAS, Grantor is, and at all relevant times has been, the fee simple title owner of the Development.

Section 1.02. WHEREAS, Grantor wishes to grant to Grantee the perpetual and exclusive private easements set forth below, subject only to the terms and limitations of this Easement.

Section 1.03. WHEREAS, Grantor represents and warrants to the Grantee that Grantor is, and at all relevant times has been, the true and lawful owner of the Development; and, that Grantor has the full right and power to grant and convey the rights set forth in this Easement.

Section 1.04. WHEREAS, Grantee desires the private and personal grant of an In Gross Easement over and across the Development, privately and personally vesting in Grantee the exclusive and perpetual right to identify and privately contract with Common Service Providers for the use of the In Gross Easement Area.

Section 1.05. WHEREAS, Grantee desires the private and personal grant of a Service Easement over and across designated portions of the Development, privately and personally vesting in Grantee the exclusive and perpetual right to privately contract for the establishment of Facilities within the Service Easement Area.

Section 1.06. WHEREAS, the Plats to be recorded by the Grantor with respect to the Development shall designate the Service Easement Area for the Service Easement as Drainage Utility and Sanitary Sewer Easements (D.U. & S.S.E.).

Section 1.07. WHEREAS, Grantee shall cause, by virtue of private contracts, extensive improvements to be made to and within the Development for the Mandatory Common Service, which improvements shall be situated on, over, under and across the Service Easement Area and make available the Mandatory Common Services within the Development.

Section 1.08. WHEREAS, certain Common Service Providers have developed expertise in providing Common Services to their customers, which expertise are currently and on a continuing basis being employed to develop superior, novel and cost competitive Communication Services.

Section 1.09. WHEREAS, to the extent technologically feasible, Grantor desires to have Advanced Telecommunications Capabilities, bundled services and billing, available at the Development.

Section 1.10. WHEREAS, Grantor and Grantee anticipate continued deregulation of electricity, water and gas, as well as other utilities (such as those related to the Communication Services), which deregulation facilitates individual users having the ability to aggregate and negotiate discounted Communication Services and Utility Services charges.

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

ARTICLE II - EASEMENT

Section 2.01. Grant of In Gross Easement. Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under, in, through and across the In Gross Easement Area for the limited purpose of identifying and contracting, in Grantee's sole and complete discretion, with any and all of the Common Service Providers allowed to provide or otherwise make available Facilities and Common Services for the Development and within the In Gross Easement Area ("In Gross Easement"). The Grantee shall have the exclusive right to identify and contract with Common Service Providers to provide or make available Common Services to the Development within the In Gross Easement Area. This grant shall not entitle Grantee to install, repair or relocate Facilities within the In Gross Easement Area, except in the Service Easement Area. The Owners and the Association shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures as provided in Section 2.04 hereof. Grantor and its grantees, licensees, lessees, franchisees, successors and assigns agree that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the In Gross Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual In Gross Easement and rights affiliated with such In Gross Easement. The In Gross Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The In Gross Easement may not and shall not be impaired, limited, lessened or transferred, sold or granted, in any fashion by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor hereby relinquishes and is prohibited from, without limitation, granting any rights, permits, licenses, rights-of-way or easements over the In Gross Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third parties, which would permit or otherwise allow the establishment of any Common Services or Facilities for Common Services on, over, under or across the In Gross Easement Area (collectively, "Prohibited In Gross Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or otherwise convey any Prohibited In Gross Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The In Gross Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs,

executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors and assigns. Any title or interest in the In Gross Easement Area shall reflect this In Gross Easement.

Section 2.02. Grant of Service Easement. Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under and across the Service Easement Area (a) 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 in the Service Easement Area any and all necessary or desirable Facilities of any type used to provide or make available any Common Services within the Development, (b) 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 Common Services or service the Facilities in the Development, and (c) to create and provide ingress and egress to and from the Service Easement Area at any time (collectively, (a), (b) and (c) shall constitute the "Service Easement"). The Service Easement is intended, and shall be, for the exclusive private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. Grantor covenants and agrees that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the Service Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual easement and private right to exclusively and perpetually identify, or contract with, third parties that shall own and operate Facilities on, over, under and across the Service Easement Area to provide Common Services within the Development, in Grantee's sole and absolute discretion. The Service Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The Service Easement may not and shall not be further impaired, limited, lessened or transferred, sold or granted, in any fashion, directly or indirectly, by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor and its grantees, licensees, lessees, franchisees, successors or assigns hereby relinquish and are prohibited from, without limitation, granting rights, permits, licenses, rights-of-way and easements over the Service Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third party(s), which would permit the establishment of any Common Services or Facilities for Common Services on, over, under or across the Service Easement Area (collectively "Prohibited Service Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors or assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or convey any Prohibited Service Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The Service Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, mortgagees, successors and assigns. Any title or interest in the Service Easement Area shall reflect this Service Easement.

Section 2.03. Use of Easement. The Combined Easement shall be for the private, personal, exclusive and perpetual use and benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified and contracted with Grantee to own, install, repair, relocate, expand, or otherwise service the Facilities used by Common Service Providers in providing Common Services to the Development in accordance with this Easement. Grantor agrees and stipulates that, due to the private, personal and exclusive nature of the grant conveyed in this Easement, no other Common Services use of the Combined Easement Area shall be made by any Person, including Grantor and its grantees, licensees, lessees, franchisees, successors or assigns.

Section 2.04. Owner and Association Improvements. The Owners and their successors in interest, shall be entitled to place such temporary or permanent barriers or other permanent obstructions and structures within the Owner Improvement Area as the Owner desires, from time to time, except as prohibited by this Easement and the Declarations. The Association and its successors in interest shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures in the Common Areas (as defined in the Declarations), except as prohibited by this Easement and the Declarations. No barriers or other temporary or permanent obstructions or structures shall be placed by the Owners or the Association in the Service Easement Area.

Section 2.05. Reservation of Right to Use. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee and its grantees, licensees, lessees, franchisees the private, personal and exclusive right to use, temporarily, additional space within the In Gross Easement Area and outside of the Service Easement Area, when such additional space is reasonably available and necessary from time to time for ingress and egress across adjacent real estate outside of the Service Easement Area but within the In Gross Easement Area for the purposes of access to and use or improvement of the Service Easement Area, and for equipment and materials necessary for any repair, maintenance, or upgrade of the Service Easement Area and the Facilities situated on, over, under or across such area which right is for the private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors, and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement.

Section 2.06. Reservation of Common Services Rights. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee the private, personal, exclusive and perpetual right to use the In Gross Easement Area, and any improvements located within the In Gross Easement Area, for any purpose which is not inconsistent with the rights granted to any Owner, the Association, or reserved in Grantor by this Easement or the Declarations; provided, further, that any such use be directed toward the protection of Grantee's exclusive rights to provide Common Services as set forth in this Easement. Grantor agrees and covenants that it will not make any use of the Combined Easement Area which is inconsistent with the uses or purposes for which either the In Gross Easement or the Service Easement has been granted to Grantee; provided, finally, that notwithstanding anything in this Easement to the contrary, Grantor expressly reserves unto itself, its grantees, licensees, lessees, franchisees, successors, assigns, the right to use the In Gross Easement Area which falls outside of the Service Easement Area in any manner not inconsistent with the grant to provide Common Services made to Grantee by this Easement and as contemplated in the Declarations.

Section 2.07. Non-Interference and Repair of Service Easement Area. Grantor covenants and agrees that no barriers or competing Facilities or other obstructions or structures shall be placed or erected, temporarily or permanently, so as to impair the use of any portion of the Service Easement Area for Common Services by Grantee or third parties identified or designated by Grantee. The Grantor shall not construct Facilities or any other Common Service improvements in the Service Easement Area or change the finish grade of the Service Easement Area without the prior written consent of the Grantee, which consent may be given or withheld in Grantee's sole and absolute discretion. Neither Grantee nor third parties identified or designated by Grantee shall do or permit anything to be done within or upon the Service Easement Area which will interfere with Grantor's use, maintenance, enjoyment or possession of the Service Easement, except as may be expressly provided otherwise in this Easement. Grantee shall be obligated to repair the Service Easement Area and for any damage(s) caused by Grantee, its agents or officers, or which shall include, without limitation, restoration of the Service Easement Area following installation or removal or maintenance or upgrade of any Facility to the same condition that such Service Easement Area existed prior to such installation or removal or maintenance and the granting of the Service Easement contemplated by this Easement. To the extent Grantee performs any such installation or removal or maintenance or upgrade of any Facility which may be located, for whatever reason, outside of the Service Easement Area but within the In Gross Easement Area, then Grantee shall have the same responsibilities as if such work had been performed within the Service Easement Area. Grantee shall have the right to remove or trim such trees and brush in and around the Service Easement as is deemed necessary by Grantee, in Grantee's sole and absolute discretion, to exercise or protect the rights conveyed to Grantee in this Easement.

Section 2.08. Termination of Exclusivity (Failure to Identify Provider). Grantee shall identify and provide access to a Mandatory Common Service Provider for each of the Mandatory Common Services. The initial Mandatory Common Service Providers are identified on Exhibit C of Appendix A hereto. Upon the written request of Grantor or any Owner, Grantee shall promptly provide a list of the current Mandatory Common Service Providers. If, at any time subsequent to the recording of this Easement, the Grantee fails or otherwise is unable to identify and provide access to a Mandatory Common Service Provider for any period in excess of fourteen (14) days, then the Grantor and Owners, each and all, shall have the right to (i) send written notice in accordance with Article IV of this Easement to Grantee indicating such failure, and (ii) in the event Grantee fails to correct such failure and identify and provide access to a Mandatory Common Service Provider within seven (7) days from the date of notice, Grantor and Owners, each and all, shall have the right to record in the Office of the Recorder of the county in the state wherein the Development is situated a written instrument setting forth (A) that notice was given to Grantee, and attaching a copy thereof, (B) the Mandatory Common Service not being identified and/or provided access, and (C) the identity of an alternate Mandatory Common Service Provider (the "Alternate Provider"). Any Alternate Provider shall agree, in writing, to provide such Mandatory Common Service in accordance with this document and all other easements,

licenses and instruments of record. Any replacement Mandatory Common Service Provider identified in accordance with this Section 2.08 shall execute such documents and instruments as may be reasonable or necessary to fully carry out and effectuate the terms and intent of this Easement and all documents and instruments executed contemporaneously herewith.

Section 2.09. Termination of Exclusivity (Inadequate or Costly Service). The Mandatory Common Services to be furnished by each Mandatory Common Service Provider shall be reasonably adequate based upon like services available to the general area around the Development from third party Common Service Provider(s). The charges made by the Mandatory Common Service Provider for such Mandatory Common Services shall be reasonable and just. A charge which is equal to, or less than, the standard, nonpromotional charge for like services shall be conclusively presumed reasonable and just. For purposes of identifying third party Common Service Provider for Telephone Services (Local), telephone services and charges shall be compared to corresponding telephone services and charges of Qwest Communications, or its successor, and a Common Service Provider for Cable Television Services, cable services or charges shall be compared to corresponding Cable Television Services and charges of Cox Communications, or its successor. It is the intent of the parties to this Easement to evaluate all services and charges against those existing and available to the Development on a consistent basis, from time to time for Mandatory Common Services. Upon a final, nonappealable determination by the appropriate authority (a) that the Mandatory Common Services being furnished by a Mandatory Common Service Provider to the Development are not reasonably adequate based upon like services available to the Development from a third party Mandatory Common Service Provider, or (b) that the charges made by Mandatory Common Service Provider(s) for such Mandatory Common Services are not reasonable and just; then, the exclusivity within the Combined Easement with respect to each Mandatory Common Service subject to such determination shall terminate. Upon such determination and termination, the Grantee shall have the right to identify and grant access to another Mandatory Common Service Provider to provide the same Mandatory Common Service subject to such determination ("Subsequent Mandatory Alternative Service"); provided, however, such new Mandatory Common Service Provider providing the Subsequent Mandatory Alternative Service shall be granted access subject to and in accordance with this Easement and the Declarations.

Section 2.10. Grantee's Consent; Approval of Declarations and Plats. Notwithstanding any other provision in this Easement, the Grantor may grant or convey rights, permits, licenses, right-of-way and easements which are expressly prohibited in this Easement, including, without limitation, Prohibited In Gross Easement Transfers and Prohibited Service Easement Transfers upon the prior written consent of Grantee, which consent may be given or withheld in the Grantee's sole and absolute discretion. For example, it is contemplated herein that the Grantor shall declare and create the Declarations and Plats, which shall be reviewed and approved by the Grantee in writing prior to the recording of such Declarations and Plats in accordance with this Section 2.10.

Section 2.11. Private Grant. The Parties do, understand, and intend to, privately declare, create, and grant the Combined Easement set forth in this Easement in order to allow the Grantee, its grantees, licensees, lessees, franchisees, successors and assigns only and exclusively the limited rights and privileges set forth in this Easement. The Combined Easement is not declared, created, or granted for public or general utility use, and shall not be so construed.

Section 2.12. Construction and Usage of "exclusivity" term. Reference to the term "exclusive" or "exclusivity" shall mean and refer to the right of Grantee to provide Common Services and to use the Combined Easement Area for such use. The term shall not be construed as prohibiting Grantor from permitting other uses or easements upon the Development or Combined Easement Area, which do not involve the provision of Common Services or any interference with the rights of Grantee to provide Common Services under this Easement. For example, it is contemplated that the Grantor shall declare and create a utility easement for the sanitary waste disposal system and drainage system in the Development.

ARTICLE III - INDEMNIFICATION AND RIGHT TO DEFEND

Section 3.01. Indemnification. Grantee agrees to indemnify, defend and hold harmless the Grantor and the heirs, executors, administrators, legal representatives, successors, licensee, and assigns of the Grantor, including, but not limited to, the Owners, the Association, and their successors in interest ("Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees, and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this Easement, and/or the enforcement of the rights of Grantee under this Easement; provided, however, that Grantee shall not be required to indemnify, defend or hold harmless Indemnitees from Indemnitees' own negligence, or any act or omission which is wrongful on Indemnitees part.

Section 3.02. Right to Defend. Grantee has the right of notice and to defend any controversy or claim arising out of or relating to this Easement, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of its terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this Easement. The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns, including, without limitation, any owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors, and assigns shall notify Grantee of any claim, suit, administrative proceeding (including regulatory proceedings), or any other action or threatened action which may, either presently or at a future date, give rise to Grantee's duty to indemnify or Grantee's right to defend, which notice shall be in writing and provided to Grantee promptly but in no event more than fifteen (15) business days from the date that Grantor or the Grantor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE IV - NOTICES

Section 4.01. Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service.

Section 4.02. Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 4.01, 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 4.01, 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 4.01, above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 4.03. Delivery Information. The information for notice to the Grantor and Grantee is set forth above (at the beginning of this Agreement).

Section 4.04. Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

"Grantor"

"Grantee"

STATE OF ARIZONA)
)SS:
COUNTY OF [insert])

Before me, a notary public in and for said County and State this ____ day of _____, 2002, personally appeared [insert], who acknowledged the execution of the foregoing instrument on behalf of such entity and by its authority for the purposes set forth in such instrument.

Witness my hand and Notarial Seal this ____ day of _____, 2002.

My Commission Expires: _____

Notary Public

My County of Residence is: _____

Printed Name

STATE OF ARIZONA)
)SS:
COUNTY OF [insert])

Before me, a notary public in and for said County and State this ____ day of _____, 2002, personally appeared [insert], who acknowledged the execution of the foregoing instrument on behalf of such entity and by its authority for the purposes set forth in such instrument.

Witness my hand and Notarial Seal this ____ day of _____, 2002.

My Commission Expires: _____

Notary Public

My County of Residence is: _____

Printed Name

Cross Reference

This instrument burdens real estate located in _____ County, State of _____. The original recorded plat that subdivided the burdened real estate was recorded in the office of the Recorder of _____ County as instrument number _____, the "Plat". The real estate is also burdened by Common Services Easements and Restrictions which were recorded in the office of the Recorder of _____ County as Instrument Number _____. The last deed conveying the burdened real estate was recorded in the office of the Recorder of _____ County as Instrument Number _____.

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": December ____, 2002

"Licensor": Corporate/Company Name:

State of Organization:

Address:

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached hereto and incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

Section 1.01 WHEREAS, Licensor is the "Grantee" under the Common Services Easements and Restrictions, 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, Licensor desires to grant Licensee, its grantees, successors and assigns an irrevocable license for the perpetual use of the Combined Easements and Reserved Rights conveyed to Licensor in the Common Services Easements and Restrictions, subject to the terms and limitations of this License.

Section 1.03 WHEREAS, in accordance with the Common Services Easements and Restrictions, Licensor desires to authorize Licensee to install, own and maintain Facilities within the Service Easement Area.

Section 1.04 WHEREAS, Licensee wishes to accept from Licensor the License as set forth below, subject to the terms and limitations of the License.

Section 1.05 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

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

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and assigns, the perpetual right, privilege and license upon, under and across the Combined Easement Area, (a) 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 any Common Services in the Combined Easement Area, (b) to excavate and perform any necessary or desirable work upon and under the surface of the Combined Easement Area as and when required to make available Common Services or service the Facilities, (c) to create and provide ingress and egress to and from the Combined Easement Area, and (d) to use the Licensor's Reserved Rights; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the Common Services Easements and Restrictions. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the Common Services Easements and Restrictions, then the terms and conditions of the Common Services Easements and Restrictions shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor.

Section 2.02 Term. This License shall 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 Affiliate of the Licensee (collectively "Affiliate Transfers"). Any Transfers to a Non-Affiliate of the Licensor shall be subject to the consent of the Licensor which consent shall not be unreasonably withheld (collectively "Non-Affiliate Transfers").

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

Section 2.05 Title and Authority. Licensor represents, with the knowledge that Licensee shall rely upon such representation, that: (a) Licensor is the "Grantee" under the Common Services Easements and Restrictions, (b) Licensor has not transferred, encumbered or otherwise diminished its rights under the Common Services Easements and Restrictions, except as set forth on Schedule 1.01, and (c) the individual executing this License on behalf of the Licensor has the authority to so execute the License.

Section 2.06 Chain of Title. This License is conveyed to the Licensee, its grantees, successors and 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 Common Services Easements and Restrictions. Licensor and Licensee hereby covenant and agree that the License granted hereby, together with all the covenants contained herein, shall "run with the land," shall be reflected on and run with the title and any interests in the Development and the Combined Easement Area and shall be binding upon all grantees, successors and 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 Common Services Easements and Restrictions, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this License or the enforcement of the rights of Licensee under this License; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless Indemnitees from Indemnitees' own negligence, or any act or omission which is wrongful on Indemnitees 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 Common Services Easements and Restrictions, 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 Common Services Easements and Restrictions. 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 - NOTICES

Section 4.01. Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 4.02. Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 4.01, 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 4.01, 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 4.01, above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 4.03. Delivery Information. The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 4.04. Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

LICENSOR

LICENSEE

Appendix: A Definitions and Interpretations

Schedule: 1.01 Other Easements or Licenses

DM-333619-1
COPYRIGHT © 2000, 2001 KRIEG DEVAULT ALEXANDER & CAPEHART, L.L.P.

Non-Exclusive
License Agreement

C01667

STATE OF ARIZONA) SS:
COUNTY OF MARICOPA

Before me, a Notary Public in and for said County and State this ____ day of _____, 2002, personally appeared _____, _____ Cox Communications, together with Licensor who each acknowledged the execution of the foregoing instrument on behalf of such entity and by its authority for the purposes set forth therein.

Witness my hand and Notarial Seal this ____ day of _____, 2002 .

My Commission Expires:

Notary Public

My County of Residence:

Printed

SCHEDULE 1.01

Other Easements or Licenses

APPENDIX A

Definitions and Interpretations

ARTICLE I - DEFINITIONS

Section 1.01 Access Entity. The term or phrase "Access Entity" shall mean and refer to _____, an Arizona limited liability company.

Section 1.02 Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications/programming services over lines or wireless channels, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.03 Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, 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 1.04 Association. The term "Association" shall mean and refer to any Village Association as defined in the Declaration.

Section 1.05 Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Section 1.06 Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

Section 1.07 Common Service Provider. The term or phrase "Common Service Provider" shall mean and refer to any third party provider of one or more Common Services, which may include a combination of persons, such that one (1) or more of Common Services are available within the Development.

Section 1.08 Common Services. The term "Common Services" shall mean and refer to any one or more of the Communication Services and Utility Services.

Section 1.09 Communication Services. The term or phrase "Communication Services" shall mean and refer to 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, utility or common functional services together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Section 1.10 Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public Internet, but that is primarily for use within the Development.

Section 1.11 Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services. What is this?

Section 1.12 Declarations. The term "Declarations" shall mean and refer to the Declarations of Covenants, Conditions, Easements and Restrictions for the Development as, or to be, recorded in the office of the recorder of the county in which the Development is located and which burden the Development, as such Declarations are amended from time to time.

Section 1.13 Developer. The term "Developer" shall mean and refer to the declarant under the Declarations.

Section 1.14 Development. The term "Development" shall mean and refer to the entire parcel of real estate the legal description of which is attached hereto as Exhibit A. To the extent development of additional real estate is or may be contemplated by the Declarations, then Development shall be liberally construed to include such real estate when and as identifiable; and, this Appendix A shall be supplemented by adding such legal description as Exhibit A - Supplement.

Section 1.15 E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Section 1.16 Excluded Devices. The term of phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, or Utility 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 1.17 Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Common Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manhole, 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 Common 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, and further including, without limitation, electricity, water, waste water, gas and any other Utility Services for which such services may be used.

Section 1.18 GAAP. The term "GAAP" shall mean and refer to United States generally accepted accounting principles applied on a consistent basis and as in effect from time to time.

Section 1.19 General Easements. The term or phrase "General Easements" shall mean the Declarant's Communication Services and Utility Easements created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to the Declarations.

Section 1.20 In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

Section 1.21 In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real estate the legal description of which is attached hereto as Exhibit B.

Section 1.22 Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Section 1.23 Mandatory Common Service Provider. The term or phrase "Mandatory Common Service Provider" shall mean and refer to a Common Service Provider that provides one (1) or more of the Mandatory Common Services. The Mandatory Common Service Providers shall be listed on Exhibit C attached hereto.

Section 1.24 Mandatory Common Services. The term or phrase "Mandatory Common Services" shall mean and refer to the Common Services set forth on Exhibit C attached hereto.

Section 1.25 Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Section 1.26 Owner. The term "Owner" shall mean the individual lot owners, or their lessee, tenants or any other successors in interest, of those lots set forth in the Plats.

Section 1.27 Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Common Service Providers to establish Common Services to an Owner's individual residential 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 and upon and within the structure as contemplated by the Owner's contract with the builder.

Section 1.28 Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Section 1.29 Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Section 1.30 Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Section 1.31 Plats. The term "Plats" shall mean and refer collectively to all of the Plats that subdivide the Development as amended from time to time.

Section 1.32 Plat Utility Easement. The term or phrase "Plat Utility Easement" shall mean the exclusive Communication Services and Utility Services Easements created pursuant to the Declarations and designated on the Plat as Utility Easement (U.E.).

Section 1.33 Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets designated on the Plats.

Section 1.34 Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Section 1.35 Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Common Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

Section 1.36 Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Section 1.37 Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, to wit:

- (a) All of the Platted Easement Area.
- (b) All of the Owner Access Area.
- (c) Those portions of the common areas identified on the Plats to the extent reasonably necessary for the establishment of Common Services and Facilities to serve the Owners.

Section 1.38 Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.39 Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.40 User. The term "User" shall mean and refer to any tenant or commercial user that receives Telephone Service (local), Cable Television Service and Internet Bandwidth Services from the Common Service Provider. A "User" shall be determined on a per unit or commercial space basis; and, specifically, not based on a per subscriber or per invoice basis. Finally, to qualify as a "User" the tenant or commercial user must qualify as such for not less than six (6) complete months during the year in which the closing on the home or commercial space initially occurred, and not less than ten (10) complete months for any subsequent year. In no event shall any home or commercial space have more than one (1) User per calendar year.

Section 1.41 Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

ARTICLE II – MISCELLANEOUS AND CONSTRUCTION

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the

Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment or Alteration. The agreement which incorporates this Appendix A may be altered or amended in whole or in part, at any time. Amendments or alterations must take the form of a written instrument setting forth the amendments or alterations, which written instrument must be signed by all Parties thereto.

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

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

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A, including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties, shall be construed and governed exclusively according to the internal laws of the State of Arizona, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Indiana state courts and of the federal courts with jurisdiction over Maricopa County, State of Arizona, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Arizona state courts located in Maricopa County, State of Arizona or of the federal courts with jurisdiction over Maricopa County, State of Arizona. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Arizona will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Maricopa County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this

Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the Term of the agreement is continuing, or the exact date [day, month and year] that the Term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A, or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Maricopa County Circuit Court, State of Arizona, is closed, then that obligation shall be performed on the next following regular business day.

Section 2.15 **Obligation of Good Faith.** The Parties shall, in the performance of all obligations under any agreement which incorporates this **Appendix A**, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 **Not a Partnership.** Nothing herein contained shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 **Exhibits, Appendices and Schedules.** All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

EXHIBIT A

Legal Description of Development

For All of Real Estate Contemplated to be Included in the Development

EXHIBIT B

Legal Description of In Gross Easement Area

For All of Real Estate Contemplated to be Included in Development

EXHIBIT C

Mandatory Common Service Providers

<u>Mandatory Common Services</u>	<u>Provider Name and Address</u>
1. Sewer	
2. Water	
3. Electric	
4. Gas	
5. Telephone Service (local)	

TC-24

From: Mark Hammons
Sent: 12/23/2002 6:37:12 PM (Eastern Time)
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Attachments: CommonServicesEasementsandRestrictions(Vistancia) Version 2...
12-23-02.doc, Non-ExclusiveLicenseAgreement(Vistancia) Version
2...12-23-02.doc, AppendixA-DefinitionsandInterpretations(Vistancia) Version
2... 12-23-02.doc
Subject: Vistancia

Here are the remaining documents described in my previous email. The following
is our attorneys contact information

Joe Montel
Montel Law Firm, P.C.
(317) 569-1680 phone
(317) 569-1690 fax
jjmmlf@ameritech.net

I look forward to your comments,

Mark <<CommonServicesEasementsandRestrictions(Vistancia) Version 2...
12-23-02.doc>> <<Non-ExclusiveLicenseAgreement(Vistancia) Version
2...12-23-02.doc>> <<AppendixA-DefinitionsandInterpretations(Vistancia)
Version 2... 12-23-02.doc>>

C01707

TC-25

From: Mark Hammons
Sent: 12/23/2002 6:28:08 PM (Eastern Time)
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Attachments: VistanciaCommercialAgreementDraftVersion 2...12-23-02.doc
Subject: Vistancia Agreement

Attached is the redlined Cox agreement we discussed today. I will forward the Common Services Easement and Restriction (CSER), License agreement and Appendix A in a subsequent email. <<VistanciaCommercialAgreementDraftVersion 2...12-23-02.doc>>

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

Deleted: Shea Sunbelt

This PROPERTY ACCESS AGREEMENT "Agreement" is entered into this ___ day of ___, 2012 between CoxCom, Inc. d/b/a Cox Communications Phoenix ("Cox") on behalf of its affiliates, located at _____ and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, located at _____ ("Master Developer"). Capitalized terms not otherwise defined in this AGREEMENT shall have the meanings ascribed to them in Appendix A (attached to the CSER and License and incorporated therein by reference) to which Appendix A is incorporated into this AGREEMENT by reference.

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RECITALS

A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community including commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development Agreement executed by Peoria on _____ and thereafter recorded in the official records of City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Whereas the Master Developer desires to grant Cox a License to install Technology Facilities to provide Communication Services to sell commercial services.

C. Whereas Cox has the legal authority, technical expertise and the financial resources necessary to install and ~~maintain~~ operate the Technology Facilities and associated Communication Services, to Vistancia Commercial property, ~~and~~ and building tenants.

E. Whereas the Master Developer anticipates transferring portions of Vistancia to Owners for the development of commercial buildings (referred to herein as "Buildings").

F. Whereas the Master Developer has subjected the Covered Property to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number _____ (the "CSER") and the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number _____ (the "License").

G. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.

H. Whereas the Access Entity has contemporaneously herewith agreed to grant Cox the License.

Deleted: D. Cox and its affiliated entities have the franchise right to provide CATV to the area of Peoria that includes Vistancia under its License from Peoria, has the legal right to provide Data Service to Vistancia and an affiliated company has the legal right to provide Telephone Service to Vistancia and Cox or its affiliated entities will make such services available to commercial buildings in Vistancia upon the receipt of the first commercial building constructed in Vistancia.

Deleted: F.

Deleted: In order to provide for the orderly and uniform development of technology facilities including the Technology Facilities in Vistancia Master Developer has reserved and intends to exercise the Terms of this Agreement to receive, exercise rights and interests and to establish easement or similar use rights, as provided for in this Agreement, in order to permit the construction, installation, repair, replacement and maintenance of Technology Facilities including the Technology Facilities and otherwise to acquire Owners to build certain facilities and to cooperate in the marketing and promotion of Technology Services including the Technology Services.

Deleted: G. Master Developer hereby agrees to grant to Cox an easement or similar use right and access to the Properties for the installation of the Technology Facilities and provision of Technology Services.

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

AGREEMENT

I. Definitions.

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

(b) "Agreement Date" means the date first set forth in this Agreement.

Deleted: see "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, the relevant party."

(c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. Backbone Conduit does not include Building Conduit.

(d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. Building Conduit does not include Backbone Conduit.

Deleted: Technology Services

"CNSR" means the Common Services Framework and Restrictions recorded in the Office of the Recorder for Maricopa County, state of Arizona, as Instrument Number

Deleted: (1) "CATV" means cable television service, whether analog or digital, except where limited to a specific context."

(f) "Contractors" means contractors, subcontractors, material providers and suppliers.

(h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.

Deleted: (1) "Cat High Speed Internet" means the Internet Services Cox provides."

Deleted: Technology Services

(g) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.

(j) "License" means the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona, as Instrument Number.

Deleted: means through the Cox hold base Perita or other applicable governmental authority to provide CATV to subscribers for CATV within the area covered by the License, which includes, but is not limited to, Vistancia

(k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.

(l) "Master Developer" means Shea Symbel Pleasant Point L.L.C., an Arizona limited liability company.

Deleted: Shea Symbel

(m) "Monthly Roaming Revenue" or "MRC" shall mean all revenues received by Cox (or by their successors and assigns) for the transmission or distribution of the Communication Services through the Cox Network located within Vistancia to the commercial buildings only, including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to Tenant, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, revenue from residential dwellings (such as apartments, condos, and single family homes), interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

Deleted: Technology Services

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

(o) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of developing and construction of one or more commercial buildings thereon.

(p) "Plat" has the meaning set forth in Appendix A, and further means a map of dedication recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or

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more Owners, which map of dedication establishes, among other things, major arterial streets and rights of way for dedication to Pima or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the License. A Plat described in the preceding item is sometimes hereinafter referred to as a "Parcel Plat."

(h) "Vistancia" means the commercial buildings within the master planned community being developed in Pima, Arizona, described in Recital A.

(i) "Technology Facilities" means all facilities, including, but not limited to, on-site and off-site equipment installed for and or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber IT interfaces, cabling interfaces, patch panels and cords, routers-bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; 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.

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(j) "Communication Services" means Common Services.

Deleted: Technology Service

(k) "Telephone Services" means Telephone Service (local) and Telephone Service (long distance).

Deleted: the telephone service, Internet Service, CATV, and any additional communication services delivered through the Technology Facilities that form part of the service available from or through Cox to tenants of Vistancia

(l) "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.

Deleted: local telephone service with access to toll and long distance telecommunication service provided by or through a Cox affiliate or third party; the long distance carrier to be selected by the subscriber

2. Term.

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The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

Deleted: Enclosure

Development Process means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the (i) Declaration of Covenants, Conditions and Restrictions for Vistancia, in general; (ii) Declaration of Covenants, Conditions and Restrictions, Assessments, Charges, Servitudes,

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Licenses, Reservations and Easements for Mountain View Village at Vistancia and (iii) all similar Declarations and Easements contemplated by (i) above, the filing of Maps of Dedication and similar processes customarily utilized in the development of subdivisions, it being further understood that Development Process shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the License:

During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer or any of its designers, or pursuant to the CSER and the License, provided, however, that such establishment and delineation shall not create or lessen the rights conveyed under the CSER or the License.

Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may co-exist with Cox in the Platted Easement Areas, and further, that the License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service providers as contemplated by the CSER and the License.

(c) Repair of Improvements. Cox shall promptly repair and restore its facilities and equipment, including, but not limited to, its cable, fiber optic and other telecommunications facilities, immediately prior to such use by Cox, exclusive of normal wear and tear, and any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to the License.

4. Communication Services & Technology Facilities Obligations of Cox.

(a) Preferred Right to Offer Communication Services. During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communication Services to tenants of the Buildings.

(b) Future Effect of Agreement. Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than any Owner that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as the Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) Cox Obligation to Provide Communication Services. Upon occupancy of the first commercial Building, Cox agrees to make available the following Communication Services to tenants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.

(i) Cable Television Services. Subject to legal and regulatory constraints, Communication Services for each tenant that subscribes for such service, provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) Service Standard & Upgrades. Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer or any Owners to keep Communication Services at a level of service that

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Deleted: 103 - Ability Technology Facilities Easements & Access Rights
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equals or exceeds the services being offered by substantially similar providers of equivalent services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Vistancia and the tenants thereof, when it is technically, economically and operationally feasible to do so.

Deleted: such cable services
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(iii) Telephone Service. Subject to legal and regulatory requirements, Cox shall offer telephone service to each tenant that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per tenant, but in no event shall Cox be required to exceed the number of telephone numbers per tenant than are available from time to time from the Local Exchange Carrier.

(iv) Internet Access Services. Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each tenant that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

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(d) Master Developer's Obligation to Provide Trenches. Master Developer shall construct, at its sole cost, trenches as needed for Cox to install the Backbone Conduit and associated Technology Facilities.

(e) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, and that the Communication Services can be provided to each tenant upon initial occupancy.

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(f) Design & Installation Conditions. Except for Master Developer's obligation to construct the necessary trenches, Cox shall design and install the Technology Facilities. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of Vistancia in which Master Developer or the applicable Owner has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

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(ii) Selection of Contractors. Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written 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 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 (subject to legal and regulatory restrictions), in accordance with applicable law.

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(iv) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

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(v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

5. **Exclusive Marketing Rights**

(a) **Exclusive Rights of Cox During the Term of this Agreement:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia.

(ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners in Vistancia, which exclusive right shall apply only within any Building constructed by a Owner that purchases any portion of Vistancia from Master Developer.

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the Community Intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish

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and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this Agreement.

(b) **Required Owner Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed in such Owner for development with commercial Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required, provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation.

(c) **Cooperation in use of Utility Easements.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plans processed by Master Developer in respect of Vistancia.

(d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.

(e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection (e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s).

7. Technology Facilities Cooperation & Coordination by Cox

(a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of commercial Buildings to Owners through escrows that close during Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Owner's as applicable) construction schedule for a particular Building, i.e., new construction, and (iii) keep Master Developer and the applicable Owner fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, Owner shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building and/or 2) permit Builder to offset the cost of construction and/or materials for Cox. If Builder chooses the first option then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner upon completion, provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plan-design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owners, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation

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by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Owner shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Owner be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

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

(d) Warranty. Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

(i) Are owned by Cox without the right of any other person or party to remove or alter the same, and

(ii) Shall provide the ~~Communication Services~~ and otherwise satisfy the operating specifications and parameters set forth in this Agreement.

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(e) Construction Manager. Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) Marketing of Commercial Buildings

Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and ~~Communication Services to such properties~~. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser-developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser-developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser-developer.

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8. **Payment Obligations.** In consideration for marketing assistance, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the penetration percentage as defined herein (the "Penetration Percentage"). The Percentage Fee shall be paid for commercial buildings constructed on land sold by Master Developer to an Owner of the commercial buildings in Vistapark. The Penetration Percentage is calculated by taking the total square footage of each commercial Building that is rented by a tenant or tenants subscribing to Cox Communication Services divided by the total square footage of that commercial Building. For example, if a building containing 100,000 total square feet has tenants (subscribing to Cox Communication Services) renting 85,000 square feet, the Penetration Percentage is equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC.

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Penetration Percentage	Applicable Percentage Fee
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the MRC attributed to Master Developer's commercial buildings reaches a higher Penetration Percentage, Master Developer shall be entitled to the higher Percentage Fee.

8.1 **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.

8.2 **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

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9. **Rent or Lease of Communications Services.** The Parties acknowledge that Cox may elect, or be required by federal or state law, to lease or allow use of portions of the Cox Network to Third Party Providers to allow such providers to provision telecommunications services via the Cox Network to Tenants in Master Developer's Buildings or Third Party Buildings. In no event shall the compensation received by Cox from such Third Party Providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing Third Party Providers to deliver telecommunication services or communication signals via the Cox Network shall not be deemed an assignment, sale or transfer of the Cox Network or a delegation or assignment of Cox's rights.

10. **Insurance, Indemnification, Waiver of Subrogation.**

(a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.

(b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) **Damage or Destruction by Cox.** In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

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(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 computers or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this 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 up 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) Master Developer represents and warrants that it has title to the Vistancia property. 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.

II. Representations and Warranties

(a) By Master Developer, Master Developer hereby represents and warrants to Cox as follows:

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

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

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

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(iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

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

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(v) ~~No Conflicting Rights. Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services -unavailable to Cox's preferred provider status with respect to the Communication Services on any period of the property, prior to the Agreement Date.~~

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(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.

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(v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

12. **Default and Remedies.**

(a) **Events of Default.** Each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

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

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

(d) Cox Additional Remedies. In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12(c).

(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

(i) CSER and License. No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the License, the parties hereto representing and acknowledging that the CSER and License are independent of this Agreement.

13. Termination and Partial Termination Rights of Parties after Termination.

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Communication Services. In the event Cox is unable or otherwise fails to provide Cable Television Services or Internet Access Services to 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 Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business

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days of Cox's receipt of Master Developer's initial determination, Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter, (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect, or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an uncured default, or otherwise, Cox shall continue to have the rights of access to each Building provided by all easements or similar use rights acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Communication Service to the tenants in the Buildings and install, operate and maintain its Technology Facilities within such areas. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another technology communication services provider, provided, however, including granting of a Non-Exclusive License Agreement that does not will release, terminate, Cox from any further obligations to provide Technology Services to any tenant of all Vistancia not previously entitled to receive the Technology Services under the terms of this CMA (but shall not release Cox from the obligation to pay Marketing Compensation earned by Master Developer on account of earlier commenced prior to termination of the CMA technology equipment, unless specifically defined in writing otherwise.

(c) Unwinding. Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) Removal of Property. Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which is located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and

(iii) ~~Commons~~ Internet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

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

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Deleted: (i) No Disconnection. Regardless of the reason for termination, Master Developer shall not construct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peris or other applicable governmental authority for installation, use, maintenance and operation of technology facilities in Peris in either applicable governmental right of way; with a Owner for the provision of Technology Facilities or Technology Services to the phone or premises of Vistancia to be built out by that Owner; or with any tenant of a Building for the provision of any or more Technology Services. In addition, and regardless of the reason for termination, Cox shall severance to have (i) such access rights which have been provided by Peris or other applicable governmental authority with respect to any access and rights of way delineated under any Plans which have been approved and accepted by Peris or other applicable governmental authority as of the date of such termination; and (ii) such easements or similar use rights which have been considered for the use-establishe use of Cox.)
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(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 an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

15. Assignment.

(a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c).

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(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the easements or rights in the areas where the ~~Communication Services~~ are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

~~Deleted: Technology Services~~

(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 herein 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 "Threat") or in which Cox or a Parent has a 30% or greater interest (an "Affiliate"); (ii) to any entity with which Cox and/or any Affiliate may merge or consolidate; (iii) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Cox or any Affiliate; (iv) to a buyer (whether by sale or exchange) of substantially all of the assets of Cox used in the operation of Cox's business conducted in Peoria or other applicable governmental authority; or to any transferee of the License or other legal authority of Cox to provide ~~Cable Television Services~~ to customers in Peoria or other applicable governmental authority, upon the franchising authority's approval of any such transfer. Any such assignment shall not be effective until the assignee signs and delivers to Master Developer a document in which the assignee assumes responsibility for all of Cox's obligations under this 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.

~~Deleted: CATV~~

~~Deleted: CABLE TELEVISION SERVICES~~

~~Deleted: CABLE TELEVISION SERVICES~~

16. Miscellaneous.

(a) Amendments. No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

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(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.** Except as otherwise provided herein in this Agreement, nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

(k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

(l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable dates during the Term.

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(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 Agreement for Technology Facilities and Communication Services as of the date first written above.

Shea Sumbell Pleasant Farm LLC

CoxCom, Inc., a Delaware corporation
d.b.a Cox Communications Phoenix

Deleted: Recording: Victim's Master Developer and/or Building Owner agrees to provide you record a memorandum which establishes Cox's ownership of other similar rights, such as those provided in the first paragraph of Exhibit E-1
Deleted: Shea Sumbell

By: _____

By: _____
J. Steven Rizley

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To: _____

Is: Vice President and General Manager

Address:
6720 N. Scottsdale Road
Suite 160
Scottsdale, AZ 85253
Phone: (480) 903-0770
Facsimile: (480) 905-1419

and required copy to:
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2844

Address:
2095 West Pinnacle Peak Road
Suite 110
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

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

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EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Master Developer/Seller has entered into that certain Commercial Telecommunications Access Agreement dated 2002 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Master Developer/Seller to Owner/Buyer. Owner/Buyer acknowledges and agrees that it is a "Owner" as defined in the Agreement. Owner/Buyer hereby agrees that during the term of the Agreement:

(a) Owner shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the Agreement.

(b) Owner shall trench and install for Cox, at Owner's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit separately to each commercial Building constructed by Owner. Building Conduit shall be owned and maintained by Owner while the Technology Facilities remain the property of Cox. During the Term of the Agreement between Cox and Master Developer and continuing thereafter for any such time as Cox is providing Communication Services to tenants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.

~~Deleted: Technology Services~~
~~Deleted: Technology Services~~

(c) Owner shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.

(d) Cox shall have the exclusive right to market and promote Communication Services (as defined in the Agreement) within any Building developed by Owner within Vistancia;

~~Deleted: Technology Services~~

(e) Owner and Master Developer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(f) Cox shall have the preferred right to provide Communication Services to each Building built by Owner within Vistancia;

~~Deleted: Technology Services~~

(g) Owner shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefore, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Owner on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;

(h) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

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EXHIBIT B

Technology Facilities

Technology Facilities are based upon Master Developer's plans as they exist at the time of execution of this Agreement 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

1) ~~Cable Television Services: Meet or exceed industry standards for programming quantity and signal quality of analog and digital cable programming.~~

~~Deleted: Video~~

2) ~~Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff with the State of Arizona.~~

~~Deleted: Voice~~

3) ~~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.~~

~~Deleted: Data~~

4) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

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EXHIBIT C

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")

Deutsche Technology Service

(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.

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EXHIBIT D

Insurance Requirements

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

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

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EXHIBIT E

Memorandum of Agreement

- PAGE 1 -

C01704

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

(i) Technology Facilities-Master Developer. Non-exclusive public utility easements or similar use rights, in those portions of the parcels comprising Vistancia which shall extend from any public right of way to such area or portion thereof as Master Developer shall reasonably determine, in order to permit any recipient or grantee of, or other person entitled to use, such area to construct, install, repair, replace and maintain public utility systems and facilities including, but not limited to, telecommunications services and internal services, and similar communication systems and/or facilities consisting of underground wires, conduits, cables, vaults, and other similar enclosures necessary or useful for the distribution of audio, video, and other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided, however, that neither the construction and installation nor the repair, replacement and maintenance of the Technology Facilities shall unreasonably interfere with the use of the area by other utility providers, or the development of the parcels comprising Vistancia or Master Developer's use and enjoyment thereof.

(ii) Right of Entry to Install Technology Facilities. During the Term of this Agreement, within the period allocated by Master Developer and City of Peoria to all utilities and other users thereof for the installation therein of the equipment and facilities of such utilities and other users, Master Developer shall permit Cox, to the extent permitted by City of Peoria or other applicable governmental authority, an equitable, fair and nondiscriminatory opportunity to construct and install the Technology Facilities, using the areas established and other use rights provided for in this Agreement, at the sole cost and expense of Cox.

(iii) Non-Exclusive License to Cox. Cox shall have, during the Term of this Agreement, a non-exclusive license to use portions of the areas reserved pursuant to this subsection 3(a) in order to construct, install, repair, replace and maintain the Technology Facilities intended to serve the Buildings within Vistancia, at the sole cost and expense of Cox.

(b) Utility (Technology Facilities) Easements & Access Rights. During the application and processing of each Plat during the Term of this Agreement, it is contemplated that there will be established non-exclusive public utility easements or other similar use rights (which shall include a non-exclusive right to place Technology Facilities within the area, in common with other public utility providers) or other similar use rights in connection with the approval of such Plat by Master Developer and Peoria (and/or other applicable governmental authority), including delineating on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration) the areas and use rights provided for in this Agreement, and Master Developer shall not approve any such Plat unless the areas and use rights provided for in this

Agreement are established, which areas shall be delineated on such Plat (or other instrument of record such as, by way of example and not of limitation, a tract declaration), as follows:

(i) **Technology Facilities.** Non-exclusive public utility easements or other similar use rights in such locations as Master Developer shall reasonably determine, which shall extend from the portion of each parcel that extends from the applicable public right of way to each Building in order to permit the construction, installation, repair, replacement and maintenance of public utility systems and facilities including, but not limited to, cable television, telecommunications, Internet service and/or similar communications systems and facilities consisting of underground wires, conduits, cables, vaults and other enclosures and equipment necessary or useful for the distribution of audio, video and any other data signals requisite for the transmission of intelligence by electrical, light wave and/or radio frequencies; provided neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the Buildings or with the use or enjoyment thereof by any Owner.

Page 4: [4] Deleted

Joseph J. Montel

12/23/2002 1:01 PM

(ii) **Non-Exclusive License to Cox.** Cox shall have, for the Term of this Agreement, a nonexclusive license to use portions of the areas reserved pursuant to this subsection 3(b) in order to construct, install, repair, replace and maintain the Technology Facilities and provide the Technology Services to all Buildings that may be built, at the sole cost and expense of Cox (except for the Building Conduit which is installed at the expense of each individual Owner).

(c) **License For Ingress & Egress to Commercial Parcels.** With respect to any commercial parcel that is conveyed by Master Developer to an Owner during the Term of this Agreement, to the extent ingress and egress to any such parcel is provided by private (i.e., not publicly dedicated) streets, Master Developer hereby agrees to secure from the Owner a nonexclusive, irrevocable license during the Term of this Agreement for ingress and egress to, upon and over private streets (if any) as necessary for ingress and egress to any such commercial parcel, in order to construct, install, replace, maintain and repair the Technology Facilities, at the sole cost and expense of Cox.

(d) **Form of Easements.** The easements and other use rights provided for under subsections 3(a), shall be in form and substance sufficient under Arizona law to run with the land in question and to bind all successive owners of such land.

Page 4: [5] Deleted

Joseph J. Montel

12/23/2002 1:03 PM

Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the areas and other rights reserved for or granted to Cox pursuant to this Section 3.

C01706

TC-26

From: Mark Hammons [mhammons@sunbeltholdings.com]
Sent: Friday, January 17, 2003 9:37 AM
To: Arthurs, Tisha (CCI-Phoenix)
Subject: FW: Cox Residential Agreement Attached As Requested



F13AAF~1.DOC

here is the residential, commercial to follow

-----Original Message-----

From: MikeF48@aol.com [mailto:MikeF48@aol.com]
Sent: Friday, January 17, 2003 9:33 AM
To: Mark Hammons
Subject: Cox Residential Agreement Attached As Requested

C01786

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

This AGREEMENT FOR TECHNOLOGY FACILITIES AND COMMUNICATION SERVICES "CMA" is entered into this ___ day of ____, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX "Cox" on behalf of its affiliates, and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, hereinafter "Master Developer." Capitalized terms not otherwise defined in this CMA shall have the meanings ascribed to them in Appendix A (attached to the CSER and License and incorporated therein by reference) which Appendix A is incorporated into this CMA by reference.

RECITALS

A. Whereas the Master Developer is the beneficial owner and is developing Vistancia, a master planned community of some 17,000 home-sites, located in the City of Peoria, Arizona "Peoria", in accordance with that certain Development Agreement executed by Peoria on ___ October 4, 2001 and thereafter recorded in the official records of the City of Peoria, Arizona, and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.

B. Whereas the Master Developer desires to make available Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value and amenities in the Covered Property. Master Developer will pay Cox a capital contribution of \$2,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and associated Communication Services to Vistancia residents.

D. Whereas Cox will be granted a non-exclusive license by a Shea Homes Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, Single Family Residents (i.e. "SFRs") and Multi-Family Units (i.e. "MFUs") upon the occupancy of the first unit built.

E. Whereas the Master Developer has subjected the Covered Property to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number ____ (the "CSER") and the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number ____ (the "License").

F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.

G. Whereas, the Master Developer agrees to grant Cox the License.

H. Whereas the Master Developer anticipates transferring portions of Vistancia to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services Provided by Cox (including, during the Initial Term)

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

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
 - (a) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (b) "Agreement Date" means the date first set forth in this CMA.
 - (c) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox.
 - (d) "Contractors" means contractors, subcontractors, material providers and suppliers.
 - (e) "Covered Property" shall mean the Development.
 - (f) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications, and its permitted successors and assigns.
 - (g) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, state of Arizona, as Instrument Number _____.
 - (h) "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.
 - (i) "Exclusive Marketing Rights" mean the rights granted to Cox under Section 5 of this CMA.
 - (j) "Initial Term" has the meaning provided in Section 2.
 - (k) "Internet Access Services" means the internet service Cox provides, marketed or known as 'Cox High Speed Internet'.
 - (l) "License" means the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona, as Instrument Number _____.
 - (m) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
 - (n) "Marketing- Incentive Fee" means the fee payable by Cox to Master Developer as provided in Section 5 of this CMA.
 - (o) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C, which Cox will provide at Master Developer's request (subject to the limitations and conditions in Exhibit C) to market the Technology Services at Vistancia.
 - (p) "Master Developer" means Shea/Sumbelt Pleasant Point L.L.C., an Arizona limited liability company.
 - (q) "MFU" means residential buildings containing multiple dwelling units for purchase, lease or rent whether detached or attached.
 - (r) "Monetary Default" has the meaning set forth in subsection 10(a)(i).

(s) "Neighborhood Builder" means any person or entity then engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer of a development parcel, a "super-pad" or platted lots, for the purpose of developing and construction of one or more SFRs thereon.

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

(u) "Home Owners Association" means the Vistancia Community Association (as established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Licenses, Reservations and Easements for Vistancia recorded by Master Developer, as Declarant); or, any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of Vistancia, and is established pursuant to a declaration of covenants, conditions and restrictions recorded by Master Developer for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia.

(v) "Performance Default" has the meaning set forth in subsection 10(a)(ii).

(w) "Plat" has the meaning set forth in Appendix A, and further means (i) a map of dedication or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal residential "superpads" or residential development parcels for sale to one or more Neighborhood Builders (each of which "super-pads" or development parcels will thereafter be further subdivided by the recordation, either by Master Developer or a Neighborhood Builder, of a subdivision plat creating legal lots for SFRs, tracts, streets and easements), which map of dedication or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, or (b) 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 MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets, public rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the License. A Plat described in the preceding item (i) is sometimes hereafter referred to as a "Parcel Plat" and a Plat described in the preceding item (ii) is sometimes hereinafter referred to as "SFR Lot Plat."

(x) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.

(y) "Services Revenues" means all gross revenues actually collected for Communication Services provided to SFRs or MFUs within Vistancia, exclusive only of construction fees, Pay-Per-View Services, Video on Demand Services, installation fees, equipment fees, guide fees or any taxes, assessments or fees levied by any governmental authority. If any Home Owners Association enters into a separate Basic Cable Television Service Agreement with Cox, the parties agree that revenues thereunder shall not be deducted in determining "Services Revenues" under this CMA.

(z) "SFR" means a single family detached or attached residence developed for sale, including a condominium or townhouse.

(aa) "Vistancia" means the SFRs and MFUs within the master planned community, being developed in Peoria, Arizona, as described in Recital A.

(bb) "Technology Facilities" means all Facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/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.

(cc) "Technology Manager" means the person, entity or entities retained by the Master Developer to assist with the operation and management of the content on the internet shell page for Vistancia-net, the Community Intranet.

(dd) "Telephone Service" means Telephone Service (local) and Telephone Service (long distance).

(ee) "Term" as applied to the term of this CMA means the Initial Term plus any extension or renewal thereof as provided for in Section 2.

(ff) "Turnover Date" means the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing a Home Owners Association, on which Master Developer's voting control of such Home Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

(gg) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(hh) "Common Area" the area of the Premise in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the Renewal Term, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

(a) Development Process means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the (i) Declaration of Covenants, Conditions and Restrictions for Vistancia, in general, (ii) Declaration of Covenants, Conditions and Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Mountain View Village at Vistancia, and (iii) all similar Declarations and filings contemplated by (i) above), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that Development Process shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the License.

(b) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

(c) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such easement have the right to enter upon (by virtue of the easements reserved hereunder) any portion of a lot on which 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.

(d) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such license, easement or use right have the right to enter (by virtue of the licenses, easements or use rights reserved hereunder) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(e) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer or any of its designees, or pursuant to the CSER and the License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the License.

(f) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service providers as contemplated by the CSER and the License.

(g) Pre-Wire Specifications. Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost securing such agreement with the Neighborhood Builder.

(h) Post-CMA Closings. As to subdivisions or parcels of property that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(b).

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

4. Communication Services & Technology Facilities Obligations of Cox.

(a) Preferred Right to Offer Technology Services. During the Term of this CMA, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Technology Services as it becomes available) to residents of SFRs and Multi-Family Units, i.e. "MFUs" or MDUs at Vistancia, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by a Home Owners Association and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model

homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars to be used by Cox for the cost of the installation of facilities for Cox to offer Communication Services at the initial phase of the Vistancia development. Cox shall be required to provide the Services to residents of the initial phase of the development upon occupancy of the first home in that phase and upon the consent of the Builder. Master Developers' payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January 1, 2003.

(b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within Vistancia owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, or (ii) any owner of any portion of Vistancia, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property from Master Developer are no longer operating model homes in Vistancia. The compensation as set forth in Exhibit G will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned marketing compensation. Upon the turnover of control of the Vistancia Maintenance Corporation to the members, this Agreement shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

(c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of Vistancia as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:

(i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

(ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, 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 constraints, Cox shall offer telephone service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to all such buildings and Cox shall meet reasonable customer requirements for individual telephone numbers per household, but in no event shall Cox be required to exceed the number of telephone numbers per household than are available from time to time from the Local Exchange Carrier.

(iv) Internet Access Service. Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.

(d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within Vistancia at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy. Notwithstanding the foregoing, Master Developer shall grant to Cox Two Million Dollars, payable in four equal payments of \$500,000 at the beginning of each quarter beginning January 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area.

(e) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of Vistancia in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.

(f) Selection of Contractors. Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

(g) Construction & Installation. Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.

(h) Approvals, Permits & Compliance. Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality standards compliance, and compliance with all applicable laws, rules and ordinances.

(i) Ownership and Maintenance. Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

(j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Technology Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.

(k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

(m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center, at Cox's sole cost and expense:

(n) **Digital Cable Television Service.** One "comp" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer);

(o) **Cox High Speed Internet Demo.** One "comp" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer);

(p) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

(i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;

(ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia from Master Developer, and (ii) within any common area tract owned by a Home Owners Association and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia shall be fully

satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;

(iii) **Similar Agreements and Co-Branding.** Master Developer shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of communication services equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services equivalent to any of the Communication Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(h)(iv).

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

(c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.

(d) **Reporting by Neighborhood Builders.** During Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.

(e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

(a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

(b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer

agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

(c) Cooperation in use of Technology Easements and similar use right areas. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.

(d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.

(e) Cox Trenching Obligations. Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(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 Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer a proportionate share of the cost thereof. Cox shall provide notice to Master Developer of the need for any Additional Trenching prior to Master Developer's commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

(a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

(b) Timely Delivery of Plans. At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice of the final date for installation in any Technology Facility. In no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.

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

(d) Warranty. Cox makes no Warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:

- (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
- (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.

(e) Construction Manager. Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.

(f) Marketing of Apartment Parcels. Cox will cooperate with Master Developer during the Term to present to such potential purchasers a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

(a) Required Insurance. During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.

(b) Damage or Destruction by Master Developer. In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

(c) Damage or Destruction by Cox. In the event that Cox or the agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.

(d) No Liability for Computer Damage. Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration or any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.

(e) Waiver of Subrogation. Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

(i) *Organization and Authority.* Master Developer is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.

(ii) *Due Execution.* Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.

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

(iv) *No Litigation.* There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.

(v) *Compliance with Law.* Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this CMA.

(vi) *No Conflicting Rights.* Master Developer has granted no exclusive or equivalent rights to any other provider of communication services comparable to Cox's preferred provider status with respect to the Communication Services on any parcel of the property, prior to the Agreement Date.

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

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

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

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

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

(v) *No Litigation.* There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

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

10. Default and Remedies.

(a) Events of Default. Each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:

(i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.

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

(b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.

(c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

(d) Cox Additional Remedies. In the event of a Performance Default by Master Developer, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12. (e)

(e) Master Developer Additional Remedies. In the event of a Performance Default by Cox, Master Developer shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.

(f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.

(g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.

(h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

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

(a) Additional Rights to Terminate. In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) Cessation or Interruption of Communication Service. In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that

Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) Master Developer Determination. If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) Continuing Rights & Obligations. After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) Termination Upon Default or Master Developer Determination. After termination following an insured default, or otherwise, Cox shall continue to have the rights of access to each SFR and MFU provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and may continue to deliver Communication Service to the SFRs and MFUs, and install, operate and maintain its Technology Facilities within such easements. No termination of the CMA shall terminate or restrict in any way the rights that Cox has or may have under its Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs in Vistancia. After termination, Master Developer shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of a Non-Exclusive License Agreement that will terminate Cox access to all Vistancia technology easements, unless specifically defined in writing otherwise.

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

(c) Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

(i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

(ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and

(iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

(a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) Arbitration. Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) Costs & Fees. Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) Procedures. The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) Award Final. Any award rendered by the arbitration panel should be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. Assignment.

(a) No Assignment. Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), except as provided in subsections (b) or (c):

(b) Master Developer. Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; or (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to an entity that controls the utility easements where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox.

(b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto, constitute the entire agreement and understanding between Master Developer and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer and Cox with respect to such subject matter.

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

(d) **Unenforceability.** The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(e) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

(g) **Relationship of Parties.** The relationship of Master Developer and Cox shall be one of independent contract, not as agent, partner, joint venturer or employee.

(h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.

(i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.

(k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.

(l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.

(m) Continuing Effect. All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.

(n) Meaning of Certain Terms. When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

(o) Rules of Construction. The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(p) Counterparts. This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Recordings: Vistancia's Master Developer and/or Building Owner agrees to execute and record a memorandum which establishes Cox's easement rights as easements or similar use rights are established and plat is recorded, such memorandum shall be in the format attached as H.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for the provision of Technology Facilities and Communication Service as of the date first written above.

"Master Developer" - Sbcia Sunbelt Pleasant Point, LLC

By: _____

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

Its: _____

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

"Cox" COXCOM, INC., a Delaware corporation,
d/b/a COX COMMUNICATIONS Phoenix
Address: 20401 N. 29th Avenue
Phoenix, AZ 85719

By: _____

J. Steven Rizley
General Manager and VP

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).
- (e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

Exhibit B

Technology Facilities

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

1) Network:

- a) Distribution plant will be designed, installed and activated to 750 MHz bi-directional HFC Network supported via self-healing fiber ring backbone.
- b) Average node size will be 500 homes and be limited to no more than six (6) actives in cascade.
- c) Developer to provide all on-site trenches for placement of infrastructure. Cox will install all conduit capacity needed exclusively for the Cox network to enable deployment of Cox Communication Services. Advance participation in actual and pre-joint trench coordination efforts with Vistancia and other expected utilities is essential to limit post-Joint Trench trenching and disruption. Cox will install shadow conduit where appropriate based on anticipated Cox needs.
- d) The provisioning from the pedestal, to the SFR of MFU Demarcation NID (Network Interface Device), shall be by coaxial cable. Developer will use reasonable efforts to enable Cox's standard design parameters that specify a maximum distance of 150 feet between pedestal and NID. Developer will use reasonable efforts to enable Cox's access to every NID. NID's will be network powered.
- e) Equipment shall be enclosed in CATV type pedestals cabinets and vaults.

2) Cable Television Services: Meet or exceed industry standards for programming quantity, and signal quality, of analog and digital cable programming.

3) Telephone Services: Voice services shall be offered in compliance with the ACC Standards of Service, and the CLEC Tariff, with the State of Arizona.

4) Internet Access Services: Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

5) Bandwidth: The network will be capable of delivery in accordance with the Technological & Services Standards established under the FCC and established franchise commitments.

6) Service Bandwidth Guarantee: In the event that the above standards are determined not to have been met, or have subsequently degraded below the minimums for an average of over 10% of the customer base, within a node, over one month's time, Cox shall, at its sole cost, do one or more of the following:

Split the affected node(s) to lessen the number of homes served but without obligation to split below an average of 50 units per node.

Open additional data channels, or

Implement such other actions, as Cox deems appropriate, to meet the minimum service standards.

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;
 - (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
 - (e) highlight Technology Services in meetings with prospective buyers and at other opportune times during the marketing process;
 - (f) provide prospective buyers with the most current information and promotional brochures and materials;

(g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;

(h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;

(i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;

(k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;

(l) allow Cox to use Technology Displays as a model to advertise, demonstrate, promote and develop Technology Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;

(m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:

(1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;

(2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;

(3) include signage and brochures of Cox in model units and other common area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;

(4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;

(5) include brief descriptions of products and services in advertisements;

(6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.

(7) provide notice of pending escrow closings

EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

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

2. Security. Cox will exercise reasonable care to protect the integrity and security of all network traffic and shall actively monitor for incursions. Reports on incursions and other security issues will be provided to Master Developer. Data modems shall be compliant with all MCNS/DOCSIS standards and provide for data packet encryption.

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

EXHIBIT F
Insurance Requirements
[to come]

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer a percent of revenue, according to the following scale, for it's marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration will be calculated by dividing active customer by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale is for Video, Phone and Internet. It is exclusive of fees assessed for pay-per-view movies, long distance, installation, equipment, guides and tax & license.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

TC-27

Sumbelt Holdings, 2/13/03

Curt, Mark, Paul, Me
Be sure to have Kenny notify me if
we run into any roadblocks w/ the DOT, City
of Peoria etc.

Sumbelt gives us \$5 million and we give
them back \$3 million to keep out the competition.

Access Entity about ready, "Name-wise"

* Set meeting w/ Dan + Howard for Tuesday.

2/18/03
Howard Dan
Paul Me

What are we missing. They are giving us an
interest free loan.

Howard feels we should proceed with legal
over seeing.

TC-28

From: Mark Hammons
Sent: 3/11/2003 2:29:54 PM (Eastern Time)
To: Drake, Paul (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
CC: Curt Smith
Attachments: AGM_COX_4_cox_res_finaldraft (03-10-03).doc, AGM_cox_comm_3
finaldraft_03-10-03.DOC, DVComparison_AGM_COX_2_cox_res_finaldraft CLEAN
(1-28-03)-AGM_COX_4_cox_res_finaldraft (03-10-03).doc,
DVComparison_AGM_cox_comm_1_finaldraft_1-21-03-AGM_cox_comm_3
finaldraft_03-10-03.doc, LIC_JM_3
Non-ExclusiveLicenseAgreement(Vistancia)-Commercial (03-04-03).doc, LIC_JM_3
Non-ExclusiveLicenseAgreement(Vistancia)-Residential (03-04-03).doc
Subject: FW: Cox Agreements

At long last...here are the residential and commercial agreements for Vistancia
as well as the license agreement for your review. Please let me know if you
would like to sit down with Curt and I to review.

Thanks

Mark

> -----Original Message-----

> From: Curt Smith
> Sent: Tuesday, March 11, 2003 7:45 AM
> To: Mark Hammons
> Subject: Cox Agreements

> Here are the latest versions. Included are redlines of the Residential and
Commercial agreements and clean license agreements.

>> <<AGM_COX_4_cox_res_finaldraft (03-10-03).doc>> >>
>> <<AGM_cox_comm_3_finaldraft_03-10-03.DOC>> >>
>> <<DVComparison_AGM_COX_2_cox_res_finaldraft CLEAN
>> (1-28-03)-AGM_COX_4_cox_res_finaldraft (03-10-03).doc>> >>
>> <<DVComparison_AGM_cox_comm_1_finaldraft_1-21-03-AGM_cox_comm_3
>> finaldraft_03-10-03.doc>> >> <<LIC_JM_3
>> Non-ExclusiveLicenseAgreement(Vistancia)-Commercial (03-04-03).doc>>
>> >> <<LIC_JM_3 Non-ExclusiveLicenseAgreement(Vistancia)-Residential
>> (03-04-03).doc>>

C03013

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

This CO-MARKETING AGREEMENT ("CMA") is entered into this ___ day of ___, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer has subjected all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona as Instrument Number 2003-___ (the "CSER").
- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- G. Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.

H. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

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

AGREEMENT

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

- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
- (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
- (d) "Agreement Date" means the date first set forth in this CMA.
- (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
- (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
- (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.

- (l) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (t) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (u) "Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder in Instrument Number 2003-_____, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (w) "Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way

established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.

- (x) "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.
- (y) "Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (z) "SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (aa) "Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.
- (bb) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established; (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.
- (dd) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ee) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(gg) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. **Term.**

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. **License and Access Rights.**

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

(b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this CMA by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

(i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

(ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.

(iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-

Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License.

(v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.

(c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

(d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(e).

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

Communication Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option

agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of this CMA, the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. The compensation as set forth in Exhibit C (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the

bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.

- (iii) Telephone Service. Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
- (iv) Internet Access Service. Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) Cox Obligation to Provide Technology Facilities. Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof. Notwithstanding the foregoing, Master Developer shall grant to Cox the sum of Three Million and No/100 Dollars (\$3,000,000.00) as provided in subsection 4(b) (payable pursuant to subsection 4(b) in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003), which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development (consisting of Village A and Trilogy).
- (e) Design & Installation Conditions. Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox; and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) Selection of Contractors. Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable

Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
 - (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center.
 - (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is

sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center.

- (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia.
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.
- (iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the Intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (iv) **Most Favored Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation.

under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

- (b) **Cox Marketing and Promotion Effort.** Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.
- (c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.
- (d) **Reporting by Neighborhood Builders.** During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing; and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.
- (e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer

agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.

- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

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

- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance; and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. **Representations and Warranties**

(a) **By Master Developer.** Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

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

- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. Default and Remedies.

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
- (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No. Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.

- (i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

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

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

- (i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

- (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive

License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License, provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.
- (c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
 - (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder, and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox.
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

(a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.

(b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

(c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.

(d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

(e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.

(f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

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

(b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment; then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

(a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).

(b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.

(c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-claims, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court,

referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.

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

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

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

"Master Developer"

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

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

"Cox"

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

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

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

By: _____
Its: _____

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

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

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

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

By: _____
J. Steven Rizley
General Manager and VP

"Access Entity"

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

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

VISTANCIA COMMUNICATIONS, L.L.C., 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

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA:

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property;

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;
 - (d) introduce and coordinate the respective marketing programs, sales and marketing agents;

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- (c) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings.

EXHIBIT C
Page (PAGE)

EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

EXHIBIT F

Insurance Requirements

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

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

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

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

This PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this ___ day of ___, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 2095 West Pinnacle Peak Road, Suite 110, Phoenix, AZ 85027, Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253; and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- B. Whereas Cox has the legal authority and technical expertise to install the Technology Facilities necessary to provide Communication Services to the Buildings (as hereinafter defined).
- C. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- D. Whereas the Master Developer has subjected all or a portion of Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, State of Arizona as Instrument Number 2003-___ (the "CSER").
- E. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.
- F. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- G. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

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

AGREEMENT

1. Definitions.

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

- (a) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).
- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, State of Arizona, as Instrument Number 2003-_____, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (k) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.

- (l) "Master Developer" means Shea Sumbelt Pleasant Point, LLC, a Delaware limited liability company, its successors and assigns.
- (m) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, charges for internet connectivity, and fees and charges for providing equipment to any tenant, Owner or occupant of a Building, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, revenue from residential dwellings (such as apartments, condos, and single family homes), interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.
- (n) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings.
- (o) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (p) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (q) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel-Plat."
- (r) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (s) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (t) "Communication Services" shall have the meaning set forth in Appendix A of the CSER, with respect to the Buildings within Vistancia.
- (u) "Telephone Service" means Telephone Service (local) and Telephone Service (long distance).
- (v) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure

or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

- (w) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.
- (x) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.
- (y) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this Agreement by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.

- (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License.
- (iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.
- (c) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this Agreement and/or the Non-Exclusive License.

4. Communication Services & Technology Facilities Obligations of Cox.

- (a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings.
- (b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.
- (c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners, tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.
 - (i) **Cable Television Services.** Subject to legal and regulatory constraints, Communication Services for each Owner, tenant or other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.

- (ii) **Service Standard & Upgrades.** Cox shall upgrade the Communication Services within a reasonable time at no cost to Master Developer, any Owner, or any tenant or other occupant of a Building, to keep Communication Services at a level of service that equals or exceeds the services being offered within the metropolitan statistical area of the community by substantially similar providers of the services included in the term "Communication Services" hereunder. If and when other products become commercially available, Cox will offer future Communication Services comprising all or a portion of the Communication Services to Buildings and the Owners, tenants and other occupants thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements, Cox shall offer Telephone Service to each Owner, tenant and other occupant of a Building who subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telecom, LLC; and provided further that Cox shall have access to such Building and Cox shall meet reasonable customer requirements for individual telephone numbers per Owner, tenant or occupant, but in no event shall Cox be required to exceed the number of telephone numbers per Owner, tenant or occupant than are available from time to time from the Local Exchange Carrier.
 - (iv) **Internet Bandwidth Access Services.** Subject to legal and regulatory constraints, Cox shall provide Internet Bandwidth Access Service for each Owner, tenant or other occupant of a Building who subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Master Developer or Owner Obligation to Provide Trenches.** Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to a Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant of such Building has not, at its own expense, constructed such trenches as are needed for Cox to install the Backbone Conduit and associated Technology Facilities.
- (e) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to the Buildings within Vistancia at the sole cost and expense of Cox, provided that the Technology Facilities will be installed and provisioned over time, on a phase-in basis during the Initial Term of this Agreement, so long as the Communication Services can be provided to each Owner, tenant or other occupant of a Building upon initial occupancy of such Building.
- (i) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the trenching that is the responsibility of Master Developer or the applicable Owner, tenant or other occupant pursuant to this Agreement) in accordance with the standards set forth in Exhibit B. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any Building within any phase or portion of Vistancia in which Master Developer or the applicable Owner, tenant or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS

route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant; (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
 - (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
 - (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
 - (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (h) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold Master Developer or any Owner liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer or any Owner as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication

Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings.
- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) **Most Favored Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation which, in the aggregate, allows a lower payment than is provided for the Percentage Fee under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage Payment under this Agreement as set forth in Section 8 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) **Required Owner Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to

enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.

- (c) **Cooperation in use of Utility Easements:** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or created for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to the following: 1) permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER) and/or 2) permit such Owner, tenant or other occupant to advance the cost of construction and/or materials on behalf of Cox and thereafter offset the amounts so advanced against fees payable to Cox for Communication Services provided to the Building. If an Owner, tenant or other occupant chooses the first option (and such option is permitted under the terms of the CSER), then the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the

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

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 8) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner,

which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable Percentage Fee</u>
0% - 74%	0% of MRC
75% - 85%	3% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee which shall apply to all MRC attributable to that Qualifying Building.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
 - (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.
9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.
10. **Insurance; Indemnification; Waiver of Subrogation.**
- (a) **Required Insurance.** During the Term of the Agreement, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit D.
 - (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or the agents thereof shall negligently or willfully damage or destroy any Technology Facilities owned by Cox in connection with or arising from the construction or installation of any on-site or off-site improvements, then Master Developer shall reimburse Cox for the cost and expense of repairing the same.

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

11. Representations and Warranties

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

- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

(b) **By Cox.** Cox hereby represents and warrants to Master Developer, as follows:

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

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

- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

12. Default and Remedies.

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

- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 11 below).

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

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Cable Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Cable Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master

Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entry shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

(i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;

- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistacianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

14. Dispute Resolution Mechanisms.

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

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

arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.

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

15. **Assignment.**

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

reasonably acceptable to Master Developer, assuming, without condition, reservation or exception, the obligations of Cox under this Agreement that are to be performed after the effective date of the assignment, then Cox shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

16. Miscellaneous.

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

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

- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.&S.S.E" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

SHEA SUNBELT PLEASANT POINT, LLC, a
Delaware limited liability company

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

By: _____
Its: _____

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its Manager

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

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

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

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

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

By: _____
J. Steven Rizley
General Manager and VP

Address: 2095 West Pinnacle Peak Road
Suite 110
Phoenix, AZ 85027
Phone: (623) 322-7137
Facsimile: (623) 322-7918

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

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

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

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

By: _____
Its: _____

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

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

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

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

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

and required copy to
8800 N. Gainey Center Drive
Suite 370
Scottsdale, AZ 85258
Phone: (480) 367-7600
Facsimile: (480) 367-2844

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Property Access Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project.
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches.
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

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

EXHIBIT C
Technology & Service Standards

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

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

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

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

EXHIBIT D
Insurance Requirements

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

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

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

This CO-MARKETING AGREEMENT FOR TECHNOLOGY FACILITIES AND COMMUNICATION SERVICES "CMA" ("CMA") is entered into this ___ day of ___, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of its affiliates itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company, (hereinafter "Master Developer").²

RECITALS

- A. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of the City of Peoria Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0296718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time ("the "Development").
- B. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Covered Property Development. Master Developer will pay Cox a capital contribution of \$2,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer Developer's payment will be made in four equal payments of \$500,000.00 at the beginning of each quarter beginning January April 1, 2003.
- C. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to Vistancia residents within Vistancia.
- D. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by a Shea Homes the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family-residents and multi-family units upon the occupancy of the first unit built.
- E. Whereas the Master Developer has subjected the Covered Property all or a portion of the Development to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions, recorded in the Office of the Recorder for Maricopa County, state State of Arizona as Instrument Number 2003- (the "CSER") and the Non-Exclusive License Agreement, recorded in the Office of the Recorder for Maricopa County, state of Arizona as Instrument Number (the "License").

- F. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including but not limited to, Communication Services.
- G. Whereas, the Master Developer Access Entity agrees to grant Cox the Non-Exclusive License.
- H. Whereas the Master Developer anticipates transferring development parcels within (or other portions of Vistancia) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services Provided provided by Cox within Vistancia.
- H. Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

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

AGREEMENT

- I. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" The term or phrase "Cable Television Services" shall mean and refer means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
 - (f) "CMA" means collectively this Co-Marketing Agreement and any subsequent (written amendments and supplements hereto executed by Master Developer and Cox and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
 - (g) "Common Area" means the area of the Premises Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.

- (b) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (c) "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.
- (d) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (e) ~~"Covered Property" shall mean the Development.~~
- (f) ~~(h) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.~~
- (g) ~~(m) "CSER" means the Common Services Easements and Restrictions recorded in the Office of the Recorder for Maricopa County, stateState of Arizona, as Instrument Number 2003, as amended from time to time.~~
- (h) ~~(n) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.~~
- (i) "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.
- (j) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (k) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing for marketing the Communication Services at Vistancia.
- (l) "Master Developer" means Steele/Surbelt Pleasant Point L.L.C., an Arizona, L.L.C., 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 ~~then~~ engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer ~~of~~ a development parcel, a "super-pad" or planned lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (o) "Official Records" means the official records of the ~~City of Peoria~~ Recorder for Maricopa County, Arizona, pertaining to real property.
- (p) "Home Owners Association" means the ~~Vistancia Community~~ each Village Association (as established pursuant to that certain ~~Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Vistancia~~ recorded by Master Developer, as ~~Declarant~~); or, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of Vistancia the Development, and is established pursuant

to a declaration of covenants, conditions and restrictions recorded by Master Developer in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of Vistancia the Development.

(v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the Maricopa County Recorder in Instrument Number 2003, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.

(w) (v)-"Plat" shall mean and refer collectively to all of the Plats recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets, public and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over Vistancia the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.

(x) (w)-"Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets (whether public or private) designated on the Plats.

(y) (x)-"Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.

(z) (y)-"SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.

(aa) (z)-"Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.

(bb) (aa)-"Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.

(cc) (bb)-"Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing a such Home Owners

Association on which Master Developer ~~the declarant's~~ voting control ~~of over~~ such Home Owners Association (in Master Developer's capacity as declarant under such declaration), will terminate.

~~(dd)~~(ee) - "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

~~(cc)~~ "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

~~(ff)~~ "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

~~(gg)~~(dd) - "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

~~(hh)~~ "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each, i.e. the ~~(each such five year term being hereinafter referred to as a "Renewal Term")~~, unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial ~~Initial~~ Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

3. License and Access Rights.

(a) Development Process. ~~As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the (i) Master Declaration of Covenants, Conditions and Restrictions for Vistancia, in general, (ii) Declaration of Covenants, Conditions and Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for each Mountain View Village, and (iii) the Village Declarations, and all similar Declarations and filings contemplated by (i) above, the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares,~~

together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.

(b) Grant of Non-Exclusive License. The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (and in all events within 20 days) following execution of this CMA by the parties. The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:

(b)-(i) Neither the construction and installation nor the repair, replacement and maintenance of such Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.

(c)-(ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of such ~~any rights granted under the Non-Exclusive License~~ have the right to enter upon (by virtue of the easements reserved hereunder) Non-Exclusive License or otherwise upon any portion of a lot on which 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.

(d)-(iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of such ~~license, easement or use right~~ any rights granted under the Non-Exclusive License have the right to enter (by virtue of the ~~licenses, easements or use rights reserved hereunder~~ Non-Exclusive Licenses or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.

(e)-(iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of its/their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License.

(f)-(v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.

(c) (g) Pre-Wire Specifications. Master Developer shall use its best efforts to include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii)

Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.

- (d) (h) Post-CMA Closings. As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in this subsection 3(bc).
- (e) (i) Repair of Improvements. Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

4. Communication Services & Technology Facilities Obligations of Cox.

- (a) Preferred Right to Offer Communication Services. During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology, comprising all or part of the Communication Services as it becomes available) to residents of SFRs and Multi-Family Units, i.e. "MFUs" or MDUs at Vistancia MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia the Development operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each Neighborhood Builder to whom it sells any portion of Vistancia the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall grant to Cox, upon acceptance of the agreement, two (2) million dollars this CMA, the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of facilities Technology Facilities for Cox to offer Communication Services at the initial phase of the Vistancia development Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the development Development upon occupancy of the first home in that phase and upon the consent of the Builder. Master Developer's Developer's payment will be made in four equal payments of \$500,000.00 installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter beginning January, commencing April 1, 2003.
- (b) Future Effect of CMA. Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within Vistancia the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, or (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation,

following the Turnover Date for Vistancia Maintenance Corporation, or (iii), any owner of any portion of Vistancia the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in Vistancia the Development. The compensation as set forth in Exhibit G (the "Marketing Compensation") will be paid to Master Developer for Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above mentioned marketing compensation Marketing Compensation. Upon the turnover of control of the Turnover Date for Vistancia Maintenance Corporation to the members, this Agreement CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.

- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of Vistancia the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.
 - (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer telephone service Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
 - (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within Vistancia the Development at its sole cost and expense, provided that the

Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof. Notwithstanding the foregoing, Master Developer shall grant to Cox Two the sum of Three Million and No/100 Dollars, (\$3,000,000.00) as provided in subsection 4(b) (payable pursuant to subsection 4(h)) in four equal payments of \$500,000 installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter beginning January 1, 2003, commencing April 1, 2003, which shall constitute cost of the buildout of the Cox Technology Facilities for the initial phase of the Development Area (consisting of Village A and Tributary).

- (e) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of Vistancia Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of Vistancia Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia Development (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees; all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either

remove the Technology Facilities from Vistancia the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.

- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder or, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder or, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
 - (a) (i) Digital Cable Television Service. One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center.
 - (b) (ii) Cox High-Speed Internet Demo. One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home is sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center.
 - (c) (iii) Signage at Point of Delivery. Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing Incentive Fees.**

- (a) **Exclusive Rights of Cox.** During the Term of this CMA:
 - (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;

(ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of Vistancia the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of Vistancia the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder.

(iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of communication services Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the internet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial) and advertising and marketing described in the last sentence of subsection 4(b)(iv)-commercial.

(iv) **Most Favored Nations.** Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any marketing compensation which taken individually (as to an individual SFR or MFD) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit G (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA (collectively, the "Most Favored Nation Rights"). Cox, Master Developer and the Access Entity acknowledge and agree that the Most Favored Nation Rights and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox.

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

- (c) **Marketing Compensation.** Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit G during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.
- (d) **Reporting by Neighborhood Builders.** During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.
- (e) **Master Developer Audit Rights.** Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. **Technology Facilities Cooperation & Coordination by Master Developer.**

- (a) **Cooperation by Master Developer.** Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.
- (b) **Required Neighborhood Builder Provision.** Master Developer shall use its best efforts to include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within Vistancia the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within Vistancia the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in use of Technology Easements and similar use right areas Similar Use Right Areas.** Master Developer shall cooperate with Cox at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plans processed by Master Developer in respect of Vistancia.

- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any Sales Centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date thereof) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer for the applicable Neighborhood Builder, if it installs the Additional Trenching a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.
- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Notwithstanding, Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation in any Technology Facility ing 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~~ warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to such potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/ developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/ developer.

8. Insurance; Indemnification; Waiver of Subrogation.

- (a) **Required Insurance.** During the Term of the CMA, Cox and Master Developer each shall maintain insurance satisfying the requirements of Exhibit F.
- (b) **Damage or Destruction by Master Developer.** In the event that Master Developer or ~~theirs~~ 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 ~~theirs~~ agents thereof shall negligently or willfully damage or destroy any on-site or off-site improvements in connection with or arising from the construction or installation of any Technology Facilities, then Cox shall reimburse Master Developer for the cost and expense of repairing the same.
- (d) **No Liability for Computer Damage.** Notwithstanding any contrary provision in this CMA, in no event shall Cox or Master Developer be liable to the other party for any loss, recovery or restoration of any electronically generated or stored data or for damage to computer or any other technology-related equipment of any such person or entity or any loss of income or revenue resulting therefrom.
- (e) **Waiver of Subrogation.** Notwithstanding any contrary provision of this CMA, each party to this CMA hereby waives all rights that it may have against the other to recover for any loss arising out of or incident to occurrence of the perils covered by property and casualty insurance that is required to be carried by each party hereto pursuant to subsection (a), notwithstanding the amount and type of such insurance.

coverage elected to be carried by such party hereunder or whether or not such party has elected to be self-insured in any amount or to any extent, except with respect to the reimbursement provisions of subsections (b) and (c) above to the extent not covered by insurance, and the parties hereto acknowledge and agree that the intent of this provision is to eliminate any risk of loss or liability to any party who may have caused or created to the detriment of the other party any loss or liability which would have been covered by property insurance and liability insurance if such other party had obtained such insurance coverage (or an adequate amount thereof) in lieu of self-insurance or an inadequate amount of, or coverage under, such insurance) except as noted with respect to subsections (b) and (c).

9. Representations and Warranties

(a) By Master Developer. Master Developer hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Master Developer is a duly organized limited liability company created under the laws of the State of Arizona ~~Delaware~~, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Master Developer provided for herein and therein.
- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this CMA has been duly authorized to execute this CMA on behalf of Master Developer.
- (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this CMA, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this CMA and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of ~~communication services~~ Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services on any parcel of the property hereunder, prior to the Agreement Date.

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

- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Cox provided for herein and therein.
- (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this CMA.

- (iii) Due Execution. Each person who, in the name of Cox, executes this CMA has been duly authorized to execute this CMA on behalf of Cox.
- (iv) No Conflict. Neither the execution and delivery by Cox of this CMA nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this CMA, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (v) No Litigation. There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this CMA, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.
- (vi) Compliance with Law. Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this CMA.

(c) By Access Entity, Access Entity hereby represents and warrants to Cox as follows:

- (i) Organization and Authority. Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.
- (ii) Due Execution. Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) No Conflict. Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) No Litigation. There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) Compliance with Law. Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) No Conflicting Rights. Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Ystancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. Default and Remedies.

- (a) Events of Default. Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
- (i) Monetary Default. A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder within 30 days after receipt of written notice that payment is delinquent.
 - (ii) Performance Default. A party shall be in "Performance Default" if the party fails to perform any obligation hereunder (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) Remedies for Monetary Default. In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) Remedies for Performance Default. In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) Cox Additional Remedies. In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) Master Developer and Access Entity Additional Remedies. In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) Termination. The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) Monetary Damages. The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) No Consequential Damages. The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) CSER and License. No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 11 below).

11. **Termination and Partial Termination; Rights of Parties after Termination.**

(a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:

(i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its License from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.

(ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter, (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Master Developer Determination:** ~~After termination following an agreed default, or otherwise. Other Termination or Expiration. From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all easements acquired by Cox, or to which Cox was entitled, hereunder or pursuant hereto, and Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such easements Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide~~

Communication Services to residents of SFRs and MFUs in Vistancia located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License Agreement; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue to continue subscribing to Cox's Communications Services.

- (ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way; and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.
- (c) **Unwinding.** Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:
 - (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
 - (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
 - (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. **Dispute Resolution Mechanisms.**

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

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.
- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel ~~should~~ shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction/jurisdiction.

13. **Assignment.**

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

of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c):

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

14. Miscellaneous.

- (a) **Amendments.** No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox ~~(and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).~~
- (b) **Integration.** The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto ~~(including, but not limited to, the Non-Exclusive License)~~, constitute the entire agreement and understanding between Master Developer, ~~the Access Entity~~ the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, ~~the Access Entity~~ the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party

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

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

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

(f) Recordings. Vistancia's Master Developer and/or Building Owner agrees to execute and record documents which will establish establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.U.S.S.E." areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this CMA for the provision of Technology Facilities and Communication Service Co-Marketing Agreement as of the date first written above.

"Master Developer"-Shea Sunbelt Pleasant Point, LLC

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

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

SHEA SUNBELT PLEASANT POINT, L.L.C., a
Delaware limited liability company

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

By: _____
Its: _____

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

By: Sunbelt PP, L.L.P., an Arizona limited
liability limited partnership, its
Manager

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

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

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

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

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

By: _____
J. Steven Rizley
General Manager and VP

"Access Entity"

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

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

By: Shea Sunbelt Pleasant Point, L.L.C., a
Delaware
limited liability company, its Manager

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

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

By:
Its:

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

By: Sunbelt PP, L.L.P., an Arizona
limited
liability limited partnership, its
Manager

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

By:
Curtis E. Smith, its Chief
Operating Officer

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Co-Marketing Agreement dated _____ 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

(a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA:

(b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer.

(c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property:

(d) Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox).

(e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property.

(f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.

(g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program.

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer, trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur. Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party;
 - (d) introduce and coordinate the respective marketing programs, sales and marketing agents;

- (c) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (k) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (l) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (m) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

EXHIBIT C
Page (PAGE)

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EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

EXHIBIT F

Insurance Requirements

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

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

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MRU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MRU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75%-79%	15%
80%-85%	16%
86%-90%	17%
90%-95%	18%
96%-100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

TC-29

LAW OFFICES OF
STOREY & BURNHAM
P.L.C.

MEMORANDUM

To: Linda Trickey, Mary Kelley, and Tisha Arthurs
CC: Curt Smith
From: Lesa J. Storey
Date: March 24, 2003
Re: Vistancia; (Commercial) Property Access Agreement and (Residential) Co-Marketing Agreement

Curt Smith requested that I forward to you the attached copies of the current versions of the following documents:

- 1) Communication Services Easements and Restrictions;
- 2) Appendix A Definitions and Interpretations;
- 3) Non-Exclusive License Agreement (relating to the non-exclusive license that would be granted to Cox pursuant to the above-referenced Property Access Agreement); and
- 4) Non-Exclusive License Agreement (relating to the non-exclusive license that would be granted to Cox pursuant to the above-referenced Co-Marketing Agreement).

Curt indicated that a concern had been raised by Cox regarding its obligations under the "most favored nations" provision that appears in Section 6(d) of the Property Access Agreement and Section 5(a)(iv) of the Co-Marketing Agreement. That provision is not intended to impose any material obligation on Cox; instead, it imposes obligations on the Master Developer (Shea Sunbelt Pleasant Point, LLC) and on the Access Entity (Vistancia Communications, L.L.C.), by requiring them not to enter into agreements with other communication service providers (i.e., providers other than Cox) on terms that are more favorable than those given to Cox. The only "obligation" of Cox under this provision is the acknowledgment in the last sentence (that the "most favored nations" provision is intended to create a level playing field, rather than to give Cox a competitive advantage). The acknowledgment in the last sentence is designed to bolster the enforceability of the "most favored nations" provision, were it ever to be challenged by a Cox competitor that is trying to gain access to the community to provide communications services.

Finally, Curt requested that I provide to you language for the "Turnover Date" definition in Section 1(cc) of the Co-Marketing Agreement, regarding a description of when the "Turnover Date" for Vistancia Maintenance Corporation will occur. Please see the language underlined below, which provides that description.

{}File Name{}

Page {PAGE }

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(cc) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration (which voting provisions, in general, provide that such voting control will terminate when such Declarant no longer owns any portion of the Covered Property (as defined in the Master Declaration) or owns or holds an option to purchase any interest in any portion of the Annexable Property (as defined in the Master Declaration), or upon such Declarant's earlier relinquishment of such voting control if it so elects in its sole and absolute discretion), and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

Please do not hesitate to contact me if you have questions or would like to discuss the foregoing.

Vistancia

Page 1 of 1

From: Lesa J. Storey [lstorey@sbplc.com]
Sent: Monday, March 24, 2003 11:53 AM
To: Trickey, Linda (CCI-Atlanta); Kelley, Mary (CCI-Phoenix); Arthurs, Tisha (CCI-Phoenix)
Cc: Curt Smith (csmith@sunbeltholdings.com)
Subject: Vistancia

Please see the attached Memorandum, and documents referenced in the Memorandum, which are being sent to you at the request of Curt Smith.

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

<<ESM_JM_4 CommonServicesEasementsandRestrictions(Vistancia) (03-24-03).doc>> <<EXH_JM_4
AppendixA-DefinitionsandInterpretations(Vistancia)(03-24-03).doc>> <<LIC_JM_4 Non-
ExclusiveLicenseAgreement(Vistancia)-Commercial (03-24-03).doc>> <<LIC_JM_4 Non-
ExclusiveLicenseAgreement(Vistancia)-Residential (03-24-03).doc>> <<MEMO_LJS_Cox (03-24-03).doc>>

file://D:\agreement\from%20shea%20legal%203-24-03.htm

3/17/2005

C01964

TC-30

• Vistancia Mdy 11/20

• Cut out of play
- struggling w/ participation side -

Rich Anderson
Curt Finck
Mark Hammond

• participation in the commercial mdy.
• Commercial agreement (Robert)
(602) 694-0980

Public Utility agreement, or similar use rights (global)

• Southern Forests

N. ~~Forest~~ Valley, Peary
alignments with habitat

Veriti Kimball
Sun Belt
Holdings

new project

Commercial

2 basic concepts - Cut not on the same page
Revenue Share very important to them
participation very important to Shea
Shea could double up 18 when building sold
Shea could reduce the amount when business secured.

2 agreements

0. 1st tied to Shea Mdy only -

⇒ 75% participation may not work for Comm'l

- philosophy of Comm'l
- dictated to legal

10/22 Tues. Distancing notes of Shea / Seabolt
Review of draft agreements

July 7 - formal notice claim

their comment

Rich Anderson
Clint Smith
Mark Klemm

ref to financing should go to
lets of Kevin

Trish Anderson
Jeff Walker

term 15 yrs. -

25 yr project

designed for 25 yrs.

→ full term is just 1/2 of the project
term frame

• Transfer of MC - master dev or multiple dev's -
- Master agreement for the developer or the entity
Leasing examples

• Option 1 - no bulkings - obviously they will not
see practitioners -

Small Capital Contribution req'd.

Contribution paid - upon termination - what does
it go - membership totally?
paid payback?
which will work?

10/22
Commercial agreement

- no provision for developer to receive benefits of agreement
- Only reimburse Caribbit replacement
- no significant partnership
- they feel there is a commitment of service - but not stated in agreement
- they worry Shea/Sumbell can participate in any Program Share w/ any Commercial operation/Process that come in
- perfect timing for any business that will select Cox
 - ⇒ agreement is not a service guarantee agreement
 - not in Comm's isn't
- * I'm bringing service in ⇒ method to reception?
 - definition of level of service -
if who will be getting in backbone
what do I get @ the curb.

Com't pay 2 streams
of service stream

TC-31

From: Curt Smith [csmith@sunbeltholdings.com]
Sent: Friday, October 03, 2003 11:57 AM
To: Christie, Tisha (CCI-Phoenix)
Subject: FW: Revised Agreements

Attachments: DVCComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc; DVCComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc; DVCComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial amd restated (09-25-03)1.doc; DVCComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential amd restated (09-25-03).doc



DVCComparison_LIC_JM_7 Non-Excl...
DVCComparison_LIC_JM_8 Non-Excl...
DVCComparison_AGM_cox_comm_5 V...
DVCComparison_AGM_COX_6 Vistanc...

> -----Original Message-----

> From: Curt Smith
> Sent: Friday, October 03, 2003 7:29 AM
> To: Tisha Arthurs (E-mail); Mary Kelley (E-mail)
> Cc: Mark Hammons
> Subject: Revised Agreements

> Attached are revised copies of the Marketing and License Agreements for Vistancia. These move all financial payments from Cox to the License Agreements. Please review these and let me know if the changes are acceptable. We really need to get these done ASAP.

> Thanks for you help.

> > <<DVCComparison_LIC_JM_7 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (06-27-03)-LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Commercial clean (09-25-03).doc>> > > <<DVCComparison_LIC_JM_8 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (06-27-03)-LIC_JM_9 Non-ExclusiveLicenseAgreement(Vistancia telecom)-Residential clean (09-25-03).doc>> > > <<DVCComparison_AGM_cox_comm_5 Vistancia commercial final redline (04-04-03)-AGM_cox_comm_6 Vistancia commercial amd restated (09-25-03)1.doc>> > > <<DVCComparison_AGM_COX_6 Vistancia residential final redline (04-04-03)-AGM_COX_7 Vistancia residential amd restated (09-25-03).doc>>

WHEN RECORDED RETURN TO:

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

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2003

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona
limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

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

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Property Access Agreement dated April 8, as of September 25, 2003, executed by Licensor, Shea-Sunbelt-Pleasant-Point/Vistancia, LLC, a Delaware limited liability company ("Master Developer"), and Licensee (the "PAA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July

23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and PAA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License, including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided; and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article XV below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

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

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the PAA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Video Television Services (as hereinafter defined), Internet Access Services (as hereinafter defined), and Telephone Service (as hereinafter defined) to Buildings (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Video Television Services, Internet Access Services, and Telephone Services or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the PAA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the PAA, then the terms and conditions of the CSER (or the PAA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed Internet access service Licensee provides, currently marketed as "Cox High Speed Internet". As used herein, the term "Video Television Services" shall mean the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services. As used herein, the term "Telephone Service" shall mean local and long distance telephone service provided by Licensee through one or more affiliates or third parties. As used herein, the term "Building" shall mean a building or other structure within the Development that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within the Development is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the PAA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the PAA. Any Transfer to a Person that is not authorized under Section 13(c) of the PAA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the PAA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the PAA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the PAA and shall also be null and void and of no force or effect.

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

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

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

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

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

Section 3.02 Service Standards. All Video Television Services, Internet Access Services, and Telephone Services provided by Licensee in Buildings within the Development shall be of the quality required under the PAA.

ARTICLE IV - ARTICLE III—INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Section 3.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this License or the enforcement of the rights of Licensee under this

Licensee; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 ~~Section 3.02~~ **Right to Defend.** Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - ARTICLE IV - AGREEMENTS BENEFITING THE CITY

Section 5.01 ~~Section 4.01~~ **Payment of Franchise Fees.** Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.015.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 ~~Section 4.02~~ **Acknowledgment of City Rights and Waiver of Claims.** Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the 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 4.025.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 ~~Section 4.03~~ **Agreement to be Bound by Peoria City Code.** Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entity or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.035.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - ARTICLE V - NOTICES

Section 6.01 ~~Section 5.01~~ **Form and Delivery.** Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United States mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service.

Section 6.02 ~~Section 5.02~~ **Receipt of Notice.** If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5.016.01, 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 5.016.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United States mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5.016.01, above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 ~~Section 5.03~~ **Delivery Information.** The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 ~~Section 5.04~~ Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

LICENSOR

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

By: ~~Shea Sunbelt Pleasant Point~~ Vistancia, 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

Schedule: 1.01 Other Easements or Licenses
3.01 License Fees

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation db/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, I.LLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea Sunbelt Pleasant Point Vistancia, L.L.C., a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea Sunbelt Pleasant Point Vistancia, L.L.C., a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

SCHEDULE 1.01

Other Easements or Licenses

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

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea 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, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

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

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

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat of Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat of Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded _____, 2003 as 2003-_____ of official records of Maricopa County, Arizona.

(List other plat(s), if any, that have been recorded as of date of recordation of Non-Exclusive License)

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor a License Fee according to the following scale based on the Applicable License Fee percentage (determined pursuant to the chart below according to the Penetration Percentage (as hereinafter defined) within each Building) multiplied by the Monthly Recurring Revenue (as hereinafter defined) for that Building. The License Fee shall be calculated (and paid by Licensor, if owed pursuant to the provisions of this Schedule 3.01) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Licensor would receive a License Fee equal to 3% of MRC with respect to that Qualifying Building.

<u>Penetration Percentage</u>	<u>Applicable License Fee</u>
85% - 94%	3% of MRC
75% - 85%	4% of MRC
86% - 95%	4% of MRC
96% - 100%	5% of MRC

Once the Penetration Percentage attributed to a particular Qualifying Building increases to a level that would produce a higher License Fee under the above chart, then Licensor shall be entitled to the higher License Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Licensor shall be paid the Applicable License Fee, if any, corresponding to the decreased Penetration Percentage.

As used herein, the term "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Licensee (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Licensee Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment, revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges.

In addition to the exclusion from MRC set forth above, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of License Fee payments due to Licensor hereunder.

The parties acknowledge that Licensee may be required by federal or state law, to lease or allow use of portions of the Licensee Technology Facilities to third party providers, to allow such providers to provide telecommunications services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Licensee from such third party providers be deemed MRC or subject to payment of License Fees hereunder. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Licensee Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Licensee Technology Facilities or a delegation or assignment of Licensee's rights.

All payments of the License Fees shall be payable to Licensee without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Licensee may designate. Payments of License Fees shall be made during the Term of the License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the PAA.

WHEN RECORDED RETURN TO:

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

NON-EXCLUSIVE LICENSE AGREEMENT

"Effective Date": _____, 2003

"Licensor": Corporate/Company Name: Vistancia Communications, L.L.C., an Arizona
limited liability company
State of Organization: Arizona
Address: 6720 North Scottsdale Road
Suite 160
Scottsdale, Arizona 85253-4424

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is made and entered into on the Effective Date by and between Licensor and Coxcom, Inc, a Delaware corporation d/b/a Cox Communications, 20401 North 29th Avenue, Phoenix, Arizona 85719 (the "Licensee"). Capitalized terms not otherwise defined in this License shall have the meanings ascribed to them in the Appendix A attached to that certain Common Services Easements and Restrictions recorded on June 27, 2003, in Instrument No. 2003-0837106, official records of Maricopa County, Arizona (such Common Services Easements and Restrictions, as amended from time to time, being hereinafter referred to as the "CSER"), which Appendix A is hereby incorporated herein by reference. The terms or phrases "Effective Date", and "Licensor" shall have the meanings ascribed to them above.

ARTICLE I - RECITALS

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

Section 1.02 WHEREAS, in consideration of the License Fee (as hereinafter defined) payable by Licensee to Licensor, Licensor desires to grant Licensee, its grantees, successors and permitted assigns an irrevocable license for the perpetual use of the Service Easement and Reserved Rights conveyed to Licensor in the CSER, subject to the terms and limitations of this License and further subject to the terms and limitations of that certain Amended and Restated Co-Marketing Agreement dated April 8, as of September 25, 2003, executed by Licensor, Shea Sunbelt-Pleasant Point Vistancia, L.L.C, a Delaware limited liability company ("Master Developer"), and Licensee (the "CMA").

Section 1.03 WHEREAS, Licensor, Master Developer, and the City of Peoria, Arizona, an Arizona chartered municipal corporation (the "City") have entered into that certain Multi-Use Easements and Indemnity recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona (the "MUEI"), which requires that Master Developer and Licensor impose certain obligations on, and secure certain agreements of, Licensee as hereinafter provided.

Section 1.04 WHEREAS, in accordance with the CSER and CMA, Licensor desires to authorize Licensee to install, own and maintain certain Facilities within the Service Easement Area.

Section 1.05 WHEREAS, Licensee wishes to accept from Licensor the license as set forth below, subject to the terms and limitations of this License (including, but not limited to, Licensee's obligation to pay the License Fee as hereinafter provided); and, in addition, Licensee wishes to undertake certain obligations that are for the benefit of and are enforceable by the City, as set forth in Article FIV below.

Section 1.06 WHEREAS, this License is a private right of contract and a grant of an irrevocable private license between Licensor and Licensee, and is not a grant of a public easement.

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

ARTICLE II - LICENSE

Section 2.01 Premises and Use. Licensor hereby declares, creates, transfers, assigns, grants and conveys unto Licensee, its grantees, successors and permitted assigns, the perpetual and non-exclusive right, privilege and license, subject to the terms of the CMA (a) upon, under and across the Service Easement Area, to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand, or otherwise service any and all necessary or desirable Facilities of any type used to provide or make available Cable Television Services, Internet Access Services (as hereinafter defined), Telephone Services (local) and Telephone Services (long distance) to SFRs (as hereinafter defined) and MFUs (as hereinafter defined) in the Development, (b) upon, under and across the Service Easement Area, to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available such Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) or service the Facilities therefor, (c) upon, under and across the Service Easement Area, to create and provide ingress and egress to and from the Service Easement Area in connection with the exercise of any rights granted hereunder, and (d) to use the Licensor's Reserved Rights in connection with the rights granted hereunder; provided, however, such License shall be subject to and limited by the limitations and restrictions set forth in the CSER and by the limitations and restrictions set forth in the CMA. Licensee expressly acknowledges and represents that, to the extent this License is inconsistent with, contrary to, or otherwise limited or circumscribed by the CSER and/or the CMA, then the terms and conditions of the CSER (or the CMA, as applicable) shall control and be binding upon Licensee, its grantees, successors and assigns, without recourse against Licensor. As used herein, the term "Internet Access Services" shall mean the high speed internet access service Licensee provides, currently marketed as 'Cox High Speed Internet'. As used herein, the term "SFR" shall mean a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse; and, the term "MFU" shall mean residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.

Section 2.02 Term. This License shall be irrevocable and shall continue perpetually (the "Term"), subject to the following: From and after the expiration or earlier termination of the CMA, this License shall remain in effect with respect to only those Service Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and this License shall terminate with respect to all portions of the Development that have not been subjected to or included within a recorded Plat as of the date of such expiration or termination (which termination shall be effective, even if any such portion of the Development is thereafter subjected to or included within a recorded Plat).

Section 2.03 Assignment and Sublicensing. The rights and obligations granted to the Licensee hereunder may be assigned, sold, transferred, sublicensed, encumbered or disposed of in any way, manner or extent (collectively "Transfers") at any time to any Person as authorized under Section 13(c) of the CMA. Any Transfer to a Person that is not authorized under Section 13(c) of the CMA shall be subject to the prior consent of the Licensor, which consent shall not be unreasonably withheld if it occurs prior to the expiration or termination of the CMA and which consent may be withheld in the sole and absolute discretion of Licensor if it occurs following the expiration or termination of the CMA. Any attempted or purported assignment, sale, transfer, sublicense, encumbrance or disposal in violation of this Section 2.03 shall be a breach of this License and the CMA and shall also be null and void and of no force or effect.

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

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

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

ARTICLE III - LICENSE FEE AND SERVICE STANDARDS

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

Section 3.02 Service Standards. All Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) provided by Licensee within the Development shall be of the quality required under the CMA.

ARTICLE IV - ARTICLE III—INDEMNIFICATION AND RIGHT TO DEFEND

Section 4.01 Section 3.01 Indemnification. Licensee agrees to indemnify, defend and hold harmless the Licensor and its successors and assigns, including, without limitation, the Grantor under the CSER, the Owners, the Association, and their successors in interest (collectively, the "Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this License or the enforcement of the rights of Licensee under this License; provided, however, that Licensee shall not be required to indemnify, defend or hold harmless any Indemnitee from that Indemnitee's own negligence, or any act or omission which is wrongful on any Indemnitee's part.

Section 4.02 Section 3.02 Right to Defend. Licensee has the right of notice and to defend any controversy or claim arising out of or relating to this License or the CSER, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of their terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this License or the CSER; provided, however, that Licensee's right to defend with respect to the CSER shall be non-exclusive and shall be held in common with Licensor and any other Person to whom Licensor

grants such rights and/or may hold such rights pursuant to contract or applicable law. The Licensor and its grantees, successors and assigns, shall notify Licensee of any claim, suit, administrative proceeding (including regulatory proceeding), or any other action or threatened action which may, either presently or at a future date, give rise to Licensee's duty to indemnify or Licensee's right to defend, which notice shall be in writing and provided to Licensee within seven (7) business days from the date that Licensor or the Licensor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE V - ARTICLE IV - AGREEMENTS BENEFITING THE CITY

Section 5.01 ~~Section 4.04~~ **Payment of Franchise Fees.** Licensee shall pay to the City the franchise fees that would be payable by Licensee pursuant to the terms of the existing or future franchise agreement (if any) between the City and Licensee, as if the City (as opposed to Licensor and/or Master Developer) were the grantor of the license and rights granted under the CMA and/or this License to provide Cable Television Services, Internet Access Services, Telephone Services (local) and Telephone Services (long distance) and/or to install Facilities within the Service Easement Area. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.015.01 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.02 ~~Section 4.02~~ **Acknowledgment of City Rights and Waiver of Claims.** Licensee hereby acknowledges the existence of the City's right, as set forth in Section 4.03 of the MUEI, to convert the MUEs (as such term is defined in the MUEI) to public utility easements. Licensee hereby waives all losses, claims, damages, liabilities or actions against the City in connection with or arising from any exercise by the City of its rights under Section 4.03 of the MUEI. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.025.02 (including, but not limited to, the obligations of Licensee hereunder).

Section 5.03 ~~Section 4.03~~ **Agreement to be Bound by Peoria City Code.** Licensee hereby agrees and warrants that any construction, maintenance, or other actions by the Licensee in the MUEs will be done and repaired as if the MUEs were held in fee by the City with no reserved rights held by the Access Entry or the Master Developer. The City shall be an intended third party beneficiary entitled to enforce the provisions of this Section 4.035.03 (including, but not limited to, the obligations of Licensee hereunder).

ARTICLE VI - ARTICLE V - NOTICES

Section 6.01 ~~Section 5.01~~ **Form and Delivery.** Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, teletype or other electronic written transmission device, or (iv) if sent by overnight courier service

Section 6.02 ~~Section 5.02~~ **Receipt of Notice.** If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 5.01-6.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 5.01-6.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 5.01-6.01 above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 6.03 ~~Section 5.03~~ **Delivery Information.** The information for notice to the Licensor and Licensee is set forth above (at the beginning of this Agreement and introductory paragraph, respectively).

Section 6.04 ~~Section 5.04~~ **Change of Address.** Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

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

LICENSOR

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

By: Shea-Sunbelt-Pleasant-Point Vistancia, L.L.C., a
Delaware
limited liability company, its Manager

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

By: _____
Its: _____

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

By: Sunbelt PP, 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~~Schedules: 1.01 Other Easements or Licenses
3.01 License Fees

LICENSEE

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

By: _____
Its: _____

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of COXCOM, INC., a Delaware corporation d/b/a/ COX COMMUNICATIONS PHOENIX, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Curtis E. Smith, the Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt PP, LLLP, an Arizona limited liability limited partnership, the Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, a Member in Shea-Sunbelt-Pleasant-Point Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, the _____ of Shea Homes Southwest, Inc., an Arizona corporation, a Member in Shea-Sunbelt-Pleasant-Point Vistancia, LLC, a Delaware limited liability company, the Manager of Vistancia Communications, L.L.C., an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

SCHEDULE 1.01

Other Easements or Licenses

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

Multi-Use Easements and Indemnity executed by Vistancia Communications, L.L.C., an Arizona limited liability company, Shea 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, dated of even date herewith and recorded concurrently herewith in the official records of Maricopa County, Arizona (relating to that certain Co-Marketing Agreement dated April 8, 2003, as more particularly described therein).

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

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

Map of Dedication Vistancia - Phase 1A, recorded in Book 647 of Maps, page 31, official records of Maricopa County, Arizona.

Final Plat of Desert Sky at Trilogy at Vistancia Parcel C21, recorded in Book 647 of Maps, page 30, official records of Maricopa County, Arizona.

Final Plat of Vistancia Village A Parcel A30, recorded in Book 647 of Maps, page 41, official records of Maricopa County, Arizona and Certificate of Correction recorded _____, 2003 as 2003-_____ of official records of Maricopa County, Arizona.

List other plat(s), if any, that have been recorded as of date of recordation of Non-Exclusive License!

SCHEDULE 3.01

License Fees

The License Fee shall be paid and calculated as follows:

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFI within the Village A portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFI within the Trilogy portion of the Development is connected to any Communication Service provided by Licensee.

Licensee shall pay Licensor a percent of revenue, according to the following scale, received by Licensee as hereinafter provided. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate shall be calculated by dividing active customers by total homes (i.e., total SFRs and MFIs) passed. Penetration shall be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay-per-view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

<u>Penetration</u>	<u>Payment</u>
<u>75%-79%</u>	<u>15%</u>
<u>80%-85%</u>	<u>16%</u>
<u>86%-90%</u>	<u>17%</u>
<u>90%-95%</u>	<u>18%</u>
<u>96%-100%</u>	<u>20%</u>

The License Fee shall be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for payment of the License Fee.

All payments of the License Fees hereunder shall be payable to Licensor without demand at the address set forth in this License, or to such other address as Licensor may designate. Payments of License Fees shall be made during the Term of this License on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Licensee fails to make payments as required herein, Licensor shall be entitled to interest at the rate of 1% per month until paid.

Within one year following Licensor's receipt of any payment of License Fees, Licensor shall have right to audit the books and records of Licensee regarding the value of consumer subscription to Communication Services for the period covered by such payment of License Fees to verify the amount of License Fees due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

Any defined (capitalized) term used but not otherwise defined in this Schedule 3.01 shall have the meaning attributed to such term in the CMA.

Shea-Sunbelt-Pleasant-Point Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT

This AMENDED AND RESTATED PROPERTY ACCESS AGREEMENT ("Agreement") is entered into this 25th day of September, 2003 between CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, on behalf of itself and its Affiliates (as hereinafter defined in this Agreement) ("Cox"), located at 20401 North 29th Avenue, Phoenix, AZ 85027, Shea-Sunbelt-Pleasant-Point Vistancia, LLC, a Delaware limited liability company ("Master Developer"), located at 6720 N. Scottsdale Road, Suite 160, Scottsdale, AZ 85253, and Vistancia Communications, L.L.C., an Arizona limited liability company ("Access Entity"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in Appendix A attached to the CSER and incorporated therein by reference, which Appendix A is incorporated into this Agreement by reference.

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Property Access Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original PAA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original PAA, all in accordance with and as hereinafter provided in this Agreement.
- C. Whereas Master Developer is the beneficial owner of and is developing Vistancia, an approximately 7,100 acre master planned community which includes certain planned commercial buildings, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the Official Records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time.
- BD. 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).
- GE. Whereas Master Developer anticipates transferring portions of Vistancia to Owners for the development of Buildings.
- DE. Whereas the Master Developer has subjected a portion of (and intends to subject all or a portion of further portions of) Vistancia to certain easement and access restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License (as hereinafter defined) shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox. Even though this Agreement is being executed by the parties prior to recordation of the CSER, this Agreement shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder in Arizona.

EG. Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the Owners, tenants and other occupants of Buildings, including, but not limited to, Communication Services.

FH. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection ~~concurrently~~ with the execution of this Agreement (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.

GI. Whereas the Access Entity agrees to grant Cox the Non-Exclusive License.

NOW, THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, the Access Entity and Cox agree as follows: and the Original FAA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original FAA 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) "Access Entity" means Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
- (b) "Agreement Date" means the date first set forth in this Agreement.
- (c) "Backbone Conduit" means telecommunications conduit, and pull boxes and vaults serving such conduit, owned by Cox, and which is located along the boundary of public streets within rights-of-way and along the boundary of public streets within the Vistancia property. The term "Backbone Conduit" does not include Building Conduit.
- (d) "Building Conduit" means telecommunications conduit which is owned and installed by Owners, and located on the property of a Building to which Cox is providing Communication Services, and which connects a Building with the Backbone Conduit or with other telecommunications facilities located within the right-of-way abutting a Building property upon which the Building Conduit is located. The term "Building Conduit" does not include Backbone Conduit.
- (e) "Building" means a building or other structure within Vistancia that is used for commercial (including, but not limited to, office and retail), office, employment center, and/or industrial purposes in accordance with applicable zoning and recorded deed restrictions. The term "Building" does not include any apartment building, multifamily residential building, or other building or structure occupied as a residence. If a building or other structure within Vistancia is used for both a commercial, office, employment center, and/or industrial purpose that would qualify it as a "Building" pursuant to the foregoing definition, and for another purpose that would not qualify it as a "Building" pursuant to the foregoing definition, then such building or other structure shall be deemed a "Building" hereunder only with respect to that portion thereof that is used for such commercial, office, employment center, and/or industrial purpose(s).

- (f) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (g) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder ~~for dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital D of this Agreement) Arizona~~, as amended from time to time.
- (h) "Customer Premises Equipment" means Cox-owned, leased or for sale equipment installed within the commercial customer's space to facilitate any of the Communication Services subscribed to, including but not limited to, converter boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (i) "Exclusive Marketing Rights" means the rights granted to Cox under Section 5 of this Agreement.
- (j) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet'.
- (k) "Local Exchange Carrier" means the local telephone company, which can be either a Bell operating company, e.g. Qwest, or an independent, which provides local telephone transmission service.
- (l) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia ~~to be dated July 9, 2003 and recorded in the office of the July 9, 2003, in Instrument No. 2003-0898772, official records of Maricopa County-Recorder, Arizona~~, as amended from time to time, which will, among other things, provide for the organization of Vistancia Maintenance Corporation.
- (m) "Master Developer" means Shea-Sunbelt-Pleasant Point Vistancia, LLC, a Delaware limited liability company, its successors and assigns.
- (n) "Monthly Recurring Revenue" or "MRC" shall mean all revenues received by Cox (or by its successors and assigns) for the transmission or distribution of the Communication Services through the Cox Technology Facilities located within Vistancia to the Buildings only, including, without limitation, revenue for internet connectivity, but excluding, or deducting from such revenues if the same were included therein, installation and construction fees, taxes, promotional or bundling discounts, equipment revenue from residential dwellings (such as apartments, condos, and single family homes), revenue from governmental entities, interest charges, bad debts, franchise fees or other governmental charges, surcharges, telecom fund charges, 911 fees, or other governmental authorized assessments (however described) and network access charges. "MRC" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.
- (o) "Non-Exclusive License" means the Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Official Records in connection with this Agreement ~~(the form of which shall be subject to review and approval by Cox as provided in Recital D) concurrently with the execution of this Agreement by the parties~~, pursuant to which Cox will be granted a non-exclusive license by the Access Entity to install Technology Facilities to provide Communication Services to Buildings and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License.
- (p) "Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.

- (q) "Owner" means any person or entity who acquires or otherwise takes legal title from Master Developer of a development parcel or platted lot for the purpose of development and construction of one or more Buildings thereon, and such person or entity's successors and assigns.
- (r) "Plat" has the meaning set forth in Appendix A of the CSER, and further means a map of dedication, parcel map, or subdivision plat recorded by Master Developer for the purpose, among other things, of creating one or more legal development parcels for sale to one or more Owners, which map of dedication, parcel map, or subdivision plat establishes, among other things, major arterial streets and rights of way for dedication to Peoria or other political subdivision with jurisdiction over Vistancia or the applicable portion thereof, provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License. A Plat described in the preceding item is sometimes hereafter referred to as a "Parcel Plat."
- (s) "Vistancia" means the approximately 7,100 acre master planned community developed in Peoria, Arizona, described in Recital A.
- (t) "Technology Facilities" means all Facilities, including, but not limited to, on-site and off-site equipment, which is installed for and/or used in the distribution of Communication Services by Cox to Buildings, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridgers, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements; but the meaning of the term does not include Customer Premises Equipment nor does the term include any conduit built by Master Developer or an Owner.
- (u) "Communication Services" shall mean Video Television Services, Internet Access Services and Telephone Service provided to or within Vistancia.
- (v) "Telephone Service" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.
- (w) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological condition, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this Agreement, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.
- (x) "Video Television Services" means the transmission to users of video programming or other programming services provided through any hardware, equipment or other facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- (y) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

- (z) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time
- (aa) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this Agreement (the "Initial Term") shall be for a period of twenty (20) years, commencing on the Agreement Date. At the end of the Initial Term, this Agreement will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and any Renewal Term are subject to early termination as provided in Sections 19 and 11 of this Agreement. The Initial Term and any Renewal Term are collectively referred to as the "Term."

3. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Parcel Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions and commercial properties; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this Agreement and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly (~~and in all events within 20 days~~) following recordation of the CSER ~~(in the form approved by Cox as provided in Recital D) concurrently with their execution of this Agreement.~~ The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
 - (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of any Building or with the use or enjoyment thereof by any Owner or subsequent owner thereof.
 - (ii) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia which allow Cox to reach each Building within Vistancia in accordance with the terms of this Agreement. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any

necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.

(iii) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this Agreement and the Non-Exclusive License.

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

1. Communication Services & Technology Facilities Obligations of Cox.

(a) **Preferred Right to Offer Communication Services.** During the Term of this Agreement, Cox shall have the preferred right to market and offer the Communication Services (including future technology comprising all or part of the Communication Services as it becomes available) to Owners, tenants and other occupants of the Buildings. In addition, Master Developer shall include in its purchase agreements with Owners that Owners shall give Cox a preferred right to market and offer the Communications Services to tenants and other occupants of the Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that (i) Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation, (ii) Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any such provision, and (iii) in no event shall a breach or default by an Owner of its obligations under any such provision constitute a default by Master Developer under this Agreement.

(b) **Future Effect of Agreement.** Notwithstanding any contrary provision of this Agreement, this Agreement (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 shall not be binding upon any owner of any portion of Vistancia, other than Master Developer and any Owner that purchases any portion of Vistancia from Master Developer for the purpose of development and construction of one or more Buildings thereon (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that (i) the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate with respect to an individual Building at such time as the Owner that purchased the property from Master Developer on which such Building is located no longer owns, operates or controls such Building or the land on which it is located, and (ii) all preferred rights granted to Cox under subsection 4(a) and all exclusive rights granted to Cox under Section 5 shall terminate at such time as all Owners that purchased property from Master Developer are no longer owning, operating or controlling the respective Buildings in Vistancia.

(c) **Cox Obligation to Provide Communication Services.** Upon occupancy of the first Building, Cox agrees to make available, at a minimum, the following Communication Services to Owners,

tenants and other occupants of the Buildings, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit C.

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

or other occupant has not, at its own expense: (1) completed construction of any Buildings or structures required by Master Developer or the applicable Owner, tenant or other occupant in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of Vistancia (limited, in the case of trenches in the right of way dedicated to City of Peoria, Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and/or other utility companies in the trench as provided in subsection 6(e) and not the Master Developer or Owner, tenant or other occupant); (3) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, and foundation sleeves.

- (ii) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of its portion of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Owner of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.
- (iii) **Construction & Installation.** Except for Building Conduit that is the responsibility of an Owner as provided in this Agreement, Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities as necessary to provide the full range of Communication Services to Buildings (subject to legal and regulatory restraints), in accordance with applicable law.
- (iv) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (v) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this Agreement, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from Vistancia or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (f) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Cox or Master Developer shall have the right to terminate this Agreement, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (g) **Individual Subscriber Basis.** The Communication Services provided by Cox under this Agreement will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are

generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.

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

5. **Exclusive Marketing Rights.** During the Term of this Agreement, Cox shall have the following exclusive rights:

- (a) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Buildings;
- (b) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services to the Owners of Buildings, which exclusive right shall apply only within any Building constructed by an Owner that purchased from Master Developer the land on which such Building is located.
- (c) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this Agreement, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services that are equivalent to the Communication Services, excepting only Communication Services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of Communication Services similar to or equivalent to any of the Communication Services (including any Internet provider or gateway) other than Cox High Speed Internet (residential or commercial).
- (d) **Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to any Building for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for compensation or license fees which, in the aggregate, allows a lower payment than is provided for the Percentage-Fee under this Agreement as set forth in Section 5(a) Schedule 3.01 of the Non-Exclusive License Agreement (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (b) provides for any compensation which taken individually (as to an individual Building) allows a lower percent payment than is provided for the Percentage-Payment under this under Schedule 3.01 of the Non-Exclusive License Agreement as set forth in Section 3 (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this Agreement), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision hereof, this Section 5(d) shall terminate and be of no further force or effect (and no party to this Agreement shall have any further rights, liabilities or obligations under this Section 5(d) upon (i) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (ii) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the M.U.E.**

6. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting and construction of the Technology Facilities in Buildings within all phases of development of Vistancia during the Term of this Agreement.
- (b) Required Owner Provision. Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and an Owner during the Term of this Agreement pursuant to which property within Vistancia is conveyed by Master Developer to such Owner for development with one or more Buildings. Master Developer shall cooperate with Cox to the extent enforcement of the Owner's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Owner obligation. Notwithstanding any contrary provision of this Agreement, Master Developer shall not be responsible or liable for any breach or default by an Owner of its obligations under any provision in Exhibit A, and in no event shall a breach or default by an Owner of its obligations under any provision in Exhibit A constitute a default by Master Developer under this Agreement.
- (c) Cooperation in use of Utility Easements. Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize utility (including any technology facilities) easements or similar use rights established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) No Obligation of Cox to Build Sales Centers or Structures. Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer and/or any Owner in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this Agreement.
- (e) Cox Trenching Obligations. Unless otherwise provided for under this Agreement or otherwise due to the failure of Cox to comply with the terms and provisions of this Agreement, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Owner(s). Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Owner, tenant or other occupant of a Building, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Owner, tenant or other occupant of the need for any Additional Trenching prior to Master Developer's (or the Owner's, tenant's or other occupant's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

7. Technology Facilities Cooperation & Coordination by Cox.

- (a) Installation of Technology Facilities. Cox shall (i) cooperate and coordinate with Master Developer and the applicable Owners in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of Buildings to Owners through escrows that close during the Term of this Agreement, (ii) commence and complete its design, construction and installation obligations in a

timely and effective manner, in accordance with Master Developer's (or the applicable Owner's, tenant's or other occupant's, as applicable) construction schedule for a particular Building (i.e., new construction), and (iii) keep Master Developer and the applicable Owner, tenant or other occupant fully and timely informed throughout the course of design and construction. Notwithstanding the foregoing, the Owner, tenant or other occupant undertaking such construction shall provide Cox with at least six (6) months notice prior to Cox beginning construction so that Cox can obtain adequate capital for such construction. If Cox fails to obtain adequate capital for its construction costs, such Owner, tenant or other occupant shall have the right to permit another telecommunications company to be the preferred provider of the new Building (subject to the limitations in the CSER), in which case the exclusive marketing provisions set forth herein shall not apply to the new Building. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given Building available to Master Developer and, if applicable, the Owner, tenant or other occupant upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Owner, tenant or other occupant, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this Agreement, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Owner, tenant or other occupant wiring routing plans for all Technology Facilities that Cox intends to construct and install at Vistancia sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Owner, tenant or other occupant undertaking construction of a Building shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Owner, tenant or other occupant. So long as the foregoing notice has been provided, in no event shall Master Developer or any Owner, tenant or other occupant be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this Agreement.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues with respect to Buildings within Vistancia.
- (f) **Marketing of Commercial Buildings.** Cox will cooperate with Master Developer during the Term to present to potential purchasers or developers of commercial property within Vistancia a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the

purchaser/developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Payment Obligations.** In consideration for marketing assistance and the other agreements of Master Developer and the Access Entity hereunder, Cox shall pay Master Developer a percentage fee as set forth below ("Percentage Fee"). Cox shall pay Master Developer the Percentage Fee according to the following scale based on the Penetration Percentage (as hereinafter defined) within each Building. The Percentage Fee shall be calculated (and paid by Cox, if owed pursuant to the provisions of this Section 9) separately for each Building within Vistancia that is constructed on land conveyed by Master Developer to an Owner, which building is rented or occupied by an Owner, tenant or other occupant that subscribes to any Cox Communication Service (each such Building being hereinafter referred to as a "Qualifying Building"). As used herein, the term "Penetration Percentage" shall mean, with respect to each Qualifying Building, the percentage amount calculated by dividing the total square footage of the Qualifying Building that is rented or occupied by Owner(s), tenant(s) or other occupant(s) subscribing to Cox Communication Services, divided by the total rentable square footage of that Qualifying Building. For example, if a Qualifying Building contains 100,000 total rentable square feet and has Owners, tenants and other occupants subscribing to Cox Communication Services that occupy 85,000 square feet, then the Penetration Percentage would be equal to 85% and Master Developer would receive a Percentage Fee equal to 2% of MRC with respect to that Qualifying Building.

Penetration Percentage	Applicable Percentage
0% - 20%	0%
21% - 40%	1%
41% - 60%	2%
61% - 80%	3%
81% - 100%	4%

Once the Penetration Percentage attributed in a particular Qualifying Building increases to a level that would produce a higher Percentage Fee under the above chart, then Master Developer shall be entitled to the higher Percentage Fee, which shall apply to all MRC attributable to that Qualifying Building. If the Penetration Percentage decreases then Master Developer shall be paid the Applicable Percentage Fee, if any, corresponding to the decreased Penetration Percentage.

- (a) **Payments.** All payments of the Percentage Fees shall be payable to Master Developer without demand at the address set forth in the first paragraph of this Agreement, or to such other address as Master Developer may designate. Payments of Percentage Fees shall be made during the Term of this Agreement on a quarterly basis, within ninety (90) days from the end of the prior quarter. If Cox fails to make payments as required herein, Master Developer shall be entitled to interest at the rate of 1% per month until paid.
- (b) **Excluded MRC.** In addition to the exclusion from MRC set forth elsewhere in this Agreement, the provision of Communication Services to state and federal governmental entities and the Franchising Authority shall be excluded from the MRC in calculation of Percentage Fee payments due to Master Developer.

9. **Resale or Lease of Communications Services.** The Parties acknowledge that Cox may be required by federal or state law, to lease or allow use of, portions of the Cox Technology Facilities to third party providers, to allow such providers to provide telecommunication services to Owners, tenants and other occupants of the Buildings. In no event shall the compensation received by Cox from such third party providers be deemed MRC or subject to payment of Percentage Fees under this Agreement. Furthermore, allowing third party providers to deliver telecommunication services or communication signals via the Cox Technology Facilities as described above shall not be deemed an assignment, sale or transfer of the Cox Technology Facilities or a delegation or assignment of Cox's rights.

8. 10-Insurance; Indemnification; Waiver of Subrogation.

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

9. 11-Representations and Warranties

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

- (ii) **Due Execution.** Each person who, in the name of Master Developer, executes this Agreement has been duly authorized to execute this Agreement on behalf of Master Developer.
 - (iii) **No Conflict.** Neither the execution and delivery by Master Developer of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Master Developer or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Master Developer under this Agreement, the executive management of Master Developer has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) **No Litigation.** There is no litigation served on Master Developer which challenges Master Developer's authority to execute, deliver or perform this Agreement and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
 - (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer activities in connection with this Agreement.
 - (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.
- (b) **By Cox.** Cox hereby represents and warrants to Master Developer as follows:
- (i) **Organization and Authority.** Cox is a duly organized corporation created under the laws of the State of Delaware, is qualified to engage in business in the State of Arizona, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Cox provided for herein and therein.
 - (ii) **Due Authorization.** Cox has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.
 - (iii) **Due Execution.** Each person who, in the name of Cox, executes this Agreement has been duly authorized to execute this Agreement on behalf of Cox.
 - (iv) **No Conflict.** Neither the execution and delivery by Cox of this Agreement nor the consummation of the transactions contemplated hereby is at the time executed in conflict with the governing instruments of Cox or any other agreements or instruments to which it is a party or by which it is bound, and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Cox under this Agreement, the executive management of Cox has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (v) **No Litigation.** There is no litigation served on Cox, which challenges Cox's authority to execute, deliver or perform this Agreement, and the executive management of Cox has no knowledge of any threatened litigation with respect to such matters.

- (vi) **Compliance with Law.** Cox is in material compliance with all laws and regulations applicable to Cox's activities in connection with this Agreement.
- (c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:
- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this Agreement and to perform each and all of the obligations of Access Entity provided for herein and therein.
 - (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this Agreement has been duly authorized to execute this Agreement on behalf of Access Entity.
 - (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this Agreement, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this Agreement, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
 - (iv) **No Litigation.** There is no litigation served on Access Entity which challenges Access Entity's authority to execute, deliver or perform this Agreement and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
 - (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this Agreement.
 - (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services to Buildings within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. ~~12.~~ **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this Agreement, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.

- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.
- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this Agreement as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this Agreement by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this Agreement due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this Agreement (subject to the provisions of Section 10(a) above and Section 11 below).

11. 13-Termination and Partial Termination; Rights of Parties after Termination.

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this Agreement may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Technology Service.** In the event Cox is unable or otherwise fails to provide Video Television Services or Internet Bandwidth Access Service to Buildings within Vistancia or any portion thereof, or in the event Cox is unable or otherwise fails to provide Telephone Services directly or through a third party to Buildings within Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this Agreement effective as of the time that Cox ceased to provide the affected Communication Service.

- (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Bandwidth Access Services, Video Television Services, or Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this Agreement, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this Agreement or, if Master Developer does not terminate this Agreement, this Agreement shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this Agreement by notice of termination to Cox.
- (b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:
- (i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this Agreement (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each Building provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the Buildings located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this Agreement shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to Owners, tenants or other Occupants of buildings located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of Vistancia that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing Owners, tenants and other occupants of Buildings described above in this subsection that desire to continue subscribing to Cox's Communications Services.
- (c) **Unwinding.** Upon the expiration or earlier termination of this Agreement, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as

is appropriate in order to "unwind" the co-marketing and other relationships established under this Agreement, including, without limitation:

- (i) **Removal of Property.** Within 30 days after the expiration or earlier termination of this Agreement, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer or any Owner (except Technology Facilities which Cox deems necessary for delivery of Communication Services to present or future subscribers for any Communication Service which are located within easements granted to Cox or which should have been granted to Cox); and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) **Destruction of Co-Branded Materials.** Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this Agreement; and
- (iii) **Intranet Disconnection.** Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancia.net" and Master Developer shall remove all of its equipment used in the operation of "Vistancia.net" from the property owned by Cox.

12. 14-Dispute Resolution Mechanisms.

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

- (a) **Mediation.** In the event that there is an unresolved dispute not provided for in any other Section of this Agreement, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) **Information.** A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the

mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. 15-Assignment.

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this Agreement or its rights under this Agreement or delegate its responsibilities for performance under this Agreement, and no transfer of this Agreement by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this Agreement arising from and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this Agreement that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this Agreement which arise after the effective date of the assignment.

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

14. 16-Miscellaneous.

- (a) **Amendments.** No amendment of this Agreement shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) **Integration.** The parties agree that this Agreement, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) **Attorneys' Fees.** In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) **Unenforceability.** The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this Agreement shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this Agreement. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the

received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.

- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractor, not as agent, partner, joint ventures or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.
- (i) **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this Agreement shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.
- (k) **Brokerage.** Each party to this Agreement represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.
- (l) **Additional Documents.** Each party hereto shall execute and deliver as such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" or "subsections" are to the numbered and lettered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means Master Developer, the Access Entity or Cox unless another meaning is required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any

governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this Agreement terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this Agreement. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "DM U.&S.S.E." (Multi-Use Easement) areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

SHEA-SUNBELT-PLEASANT POINT VISTANCIA
LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

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

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

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

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

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

By: _____
Its: _____

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

By: _____
J. Steven Rizley
General Manager and VP

Address: 20401 North 29th Avenue

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

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

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

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

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

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

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

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

Lender Consent:
The undersigned hereby consents to the foregoing Amended and Restated Property Access Agreement, as
required by the terms of that certain Assignment of Common Services, Easements and Restrictions executed
by Vistancia Communications, L.L.C., an Arizona limited liability company and Residential Funding
Corporation, a Delaware corporation, dated June 27, 2007.
RESIDENTIAL FUNDING CORPORATION, a Delaware
corporation
By: _____
Its:

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Owners

Seller has entered into that certain Amended and Restated Property Access Agreement dated 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox"), a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Property Access Agreement and amendment(s) being hereinafter referred to as the "Agreement") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is an "Owner" as defined in the Agreement. Buyer hereby agrees that during the term of the Agreement:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Seller pursuant to Section 6(a) of the Agreement.
- (b) Buyer shall trench and install for Cox, at Buyer's sole cost and expense, conduit of a size to be determined by Cox ("Building Conduit") running from the Backbone Conduit (as defined in the Agreement) separately to each commercial Building (as defined in the Agreement) constructed by Buyer. Building Conduit shall be owned and maintained by Buyer while the Technology Facilities (as defined in the Agreement) remain the property of Cox. During the Term of the Agreement between Cox and Seller and continuing thereafter for any such time as Cox is providing Communication Services (as defined in the Agreement) to Owners, tenants and other occupants of the Buildings, Cox shall have a right of first refusal to use the Building Conduit for its Technology Facilities to provide Communication Services.
- (c) Buyer shall submit its construction plans to Cox at least six (6) months prior to Cox commencing installation of the Technology Facilities.
- (d) Buyer shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each Building built by Buyer within the Vistancia project, which shall include the preferred right to market and offer Communication Services to Owners, tenants and other occupants of the Buildings developed by Buyer within the Vistancia project;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each Building constructed by Buyer on the Property. In the case of trenches within rights of way dedicated to City of Peoria, the City of Peoria or other applicable governmental authority, the access described in the preceding item (i) shall apply only to such Technology Facilities as Cox is permitted by City of Peoria, the City of Peoria or applicable governmental authority to install in such trenches;
- (g) Buyer shall give Cox a preferred right to market and offer the Communication Services to tenants and other occupants of the Buildings.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Owner that purchases from Master Developer, and the term "Property" would refer to the real property within Vistancia being purchased by such Owner pursuant to the particular purchase agreement or option agreement.]

EXHIBIT B

Technology Facilities

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

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

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

EXHIBIT C
Technology & Service Standards

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

(a) Franchise or license requirements imposed by Peoria or other applicable governmental authority, the Federal Communications Commission ("FCC"), the Arizona Corporation Commission ("ACC") or other applicable governmental entities;

(b) Tariffs on file with the ACC

(c) Bellcore (including JA-NWT-000909);

(d) National Cable Television Association; and

(e) Data Network Standards.

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

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

EXHIBIT D
Insurance Requirements

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

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

Shea-Sunbelt-Pleasant-Point/Vistancia, LLC
&
COXCOM, INC.
AMENDED AND RESTATED CO-MARKETING AGREEMENT

This AMENDED AND RESTATED CO-MARKETING AGREEMENT ("CMA") is entered into this 25th day of September, 2003 between COXCOM, INC., a Delaware corporation d/b/a COX COMMUNICATIONS PHOENIX (hereinafter "Cox") on behalf of itself and its Affiliates (as hereinafter defined in this CMA), Vistancia Communications, L.L.C., an Arizona limited liability company (hereinafter "Access Entity"), and Shea-Sunbelt-Pleasant-Point/Vistancia, LLC, a Delaware limited liability company; (hereinafter "Master Developer").

RECITALS

- A. Whereas the Master Developer, Cox, and the Access Entity have previously entered into that certain Co-Marketing Agreement dated April 8, 2003, relating to the master planned community known as Vistancia (the "Original CMA").
- B. Whereas the Master Developer, Cox, and the Access Entity now desire to terminate, supersede, and replace in its entirety the Original CMA, all in accordance with and as hereinafter provided in this CMA.
- C. Whereas the Master Developer is the beneficial owner of and is developing Vistancia, a master planned community of approximately 7,100 acres and some 17,000 planned home-sites, located in the City of Peoria, Arizona ("Peoria"), in accordance with that certain Development and Annexation Agreement executed by Peoria on October 4, 2001 and thereafter recorded in the official records of Maricopa County, Arizona, on October 24, 2001, in Instrument No. 2001-0986718 and the PAD plan and other approvals and entitlements referenced therein and related thereto, as amended from time to time (the "Development").
- BD. Whereas the Master Developer desires to make available, through Cox, Technology Facilities and associated Communication Services to provide for the preservation and enhancement of the value of and amenities in the Development. Master Developer will pay Cox a nonrefundable capital contribution of \$3,000,000.00 to deliver said Communication Services at the time of the first home owner occupancy in the initial development phase of Vistancia. Master Developer's payment will be made in four equal payments of \$750,000.00 at the beginning of each quarter beginning April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$1,125,000.00.
- GE. Whereas Cox has the legal authority, technical expertise, and the financial resources necessary to install and properly maintain the Technology Facilities and to provide associated Communication Services to residents within Vistancia.
- DE. Whereas pursuant to that certain Non-Exclusive License Agreement to be executed by the Access Entity and Cox and recorded in the Office of the Recorder for Maricopa County, State of Arizona in connection with this CMA (the "Non-Exclusive License"), Cox will be granted a non-exclusive license by the Access Entity to provide Cable Television Services to Vistancia, and will also be granted the right under this same license to provide Internet Access Services and Telephone Services to Vistancia residents, including, without limitation, residents of single family and multi-family units upon the occupancy of the first unit built, and in consideration thereof Cox will agree to pay to the Access Entity a License Fee as set forth in Schedule 3.01 of the Non-Exclusive License. The Non-Exclusive License is hereby incorporated in this CMA by this reference thereto.
- EG. Whereas the Master Developer intends to subject all or has subjected a portion of the Development (and intends to subject further portions of the Development in the future) to certain easement and access

restrictions to facilitate the provision of enhanced technological capabilities, including, but not limited to, those easement and access restrictions set forth in the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, State of Arizona (the "CSER"). The form of the CSER and the Non-Exclusive License shall be subject to review and approval by Cox prior to recordation thereof, which approval shall not be unreasonably withheld by Cox and shall be deemed given unless Cox delivers to Master Developer its specific written objections to the proposed form of CSER (or Non-Exclusive License, as applicable) within ten days after Master Developer's delivery thereof to Cox even though this CMA is being executed by the parties prior to recordation of the CSER, this CMA shall in all events be subject and subordinate to the CSER and the Access Entity's rights thereunder.

- FH.** Whereas the Master Developer has formed the Access Entity for the purposes of holding the right to grant access to the easements created for the purpose of providing certain technological capabilities that benefit the residents of Vistancia, including, but not limited to, Communication Services.
- GI.** Whereas, the Access Entity agrees to grant Cox the Non-Exclusive License.
- HJ.** Whereas the Master Developer anticipates transferring development parcels within (or other portions of) the Development to Neighborhood Builders for the development of subdivisions (referred to herein as "subdivision parcels") and otherwise will seek the cooperation of Neighborhood Builders in the marketing and promotion of the Communication Services provided by Cox within Vistancia.
- HK.** Whereas this CMA is intended by the parties to apply only to, and this CMA shall apply only to, certain common area tracts owned by a Home Owners Association or Vistancia Maintenance Corporation as hereinafter provided, the SFRs and the MFUs in the Development, and not to any property within the Development that is used for any commercial, retail, industrial, employment center, or other non-residential purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained in this CMA, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Master Developer, Access Entity and Cox agree as follows: and the Original CMA is hereby amended and restated in its entirety as hereinafter set forth, it being agreed that the Original CMA shall be of no further force or effect and is replaced and superseded in its entirety by this CMA;

AGREEMENT

1. Definitions. The following terms shall have the following meanings for all purposes under this CMA:
- (a) "Access Entity" means and refers to Vistancia Communications, L.L.C., an Arizona limited liability company, its successors and assigns.
 - (b) "Activation Ready" means all Technology Facilities that are necessary to provide Communication Services to an SFR or MFU are in place and operational, subject only to being activated upon completion of appropriate subscriber agreements.
 - (c) "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).
 - (d) "Agreement Date" means the date first set forth in this CMA.
 - (e) "Cable Television Services" means and refers to the transmission to users of video programming or other programming services provided through any Technology Facilities or other Facilities (as defined

in the CSER) related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

- (f) "CMA" means collectively this Amended and Restated Co-Marketing Agreement and any subsequent written amendments and supplements hereto executed by Master Developer and Cox (and by Access Entity, to the extent any such amendments and supplements affect or relate to the obligations or agreements of Access Entity hereunder).
- (g) "Common Area" means the area of the Development in which marketing material placement created and/or provided by Cox requires prior approval of Master Developer.
- (h) "Common Service Provider" shall mean and refer to any third party provider of one or more Communication Services and/or utility services.
- (i) "Communication Services" shall mean and refer to Cable Television Services, Internet Access Services, and Telephone Services, provided or to be provided to or within Vistancia.
- (j) "Contractors" means contractors, subcontractors, material providers and suppliers.
- (k) "Cox" means CoxCom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix, and its permitted successors and assigns.
- (l) "CSER" means the Common Services Easements and Restrictions to be recorded in the Office of the Recorder for dated June 10, 2003 and recorded June 27, 2003 in Instrument No. 2003-0837106, official records of Maricopa County, State of Arizona (the form of which shall be subject to review and approval by Cox as provided in Recital E of this CMA) Arizona, as amended from time to time.
- (m) "Customer Premises Equipment" shall mean Cox-owned, leased or for sale equipment installed within the customer's home to facilitate any of the Communication Services subscribed to, including, but not limited to, converter or set-top boxes, cable modems, digital audio receivers, remote control devices and signal amplifiers.
- (n) "Declarations" shall mean and refer to the Master Declaration, each Village Declaration, and each other declarations of covenants, conditions, easements and restrictions for the Development or any portion thereof as, or to be, recorded in the office of the Maricopa County Recorder in accordance with the Master Declaration and the applicable Village Declaration and which burden the Development or any portion thereof, as each of the foregoing are amended from time to time.
- (o) "Internet Access Services" means the high speed Internet access service Cox provides, currently marketed as 'Cox High Speed Internet.
- (p) "Marketing and Promotion Program" means the promotional and marketing services and other efforts described in Exhibit C for marketing the Communication Services at Vistancia.
- (q) "Master Developer" means Shea-Sunbelt-Pleasant-Point Vistancia, LLC, a Delaware limited liability company, its successors and permitted assigns.
- (r) "MFU" means residential buildings within the Development containing multiple family dwelling units for purchase, lease or rent whether detached or attached.
- (s) "MIUI" means that certain Multi-Use Easements and Indemnity executed by the City, Access Entity, and Master Developer, recorded on July 23, 2003, in Instrument No. 2003-0975499, official records of Maricopa County, Arizona, as amended from time to time.

- (l) (s)-"Neighborhood Builder" means any person or entity engaged in the business of constructing SFRs or MFUs for sale to the public, who acquires or otherwise takes legal title from Master Developer to a development parcel, a "super-pad" or platted lots within the Development, for the purpose of developing and construction of one or more SFRs or MFUs thereon.
- (m) (t)-"Official Records" means the official records of the Recorder for Maricopa County, Arizona, pertaining to real property.
- (n) (u)-"Home Owners Association" means each Village Association, and any other homeowners' or property owners' association that has as its members the owners of SFRs or MFUs in all or any portion of the Development, and is established pursuant to a declaration of covenants, conditions and restrictions recorded in accordance with the Master Declaration and the applicable Village Declaration for the purpose of, among other things, the administration and maintenance of common area tracts within all or any portion of the Development.
- (o) (v) "Master Declaration" means that certain Declaration of Covenants, Conditions and Restrictions for Vistancia to be recorded in the office of the dated July 9, 2003 and recorded July 9, 2003, in Instrument No. 2003-8898777, official records of Maricopa County Recorder, Arizona, as amended from time to time, which among other things, provide for the organization of Vistancia Maintenance Corporation.
- (p) (w)-"Plat" shall mean and refer collectively to all of the recorded subdivision plats and maps of dedication that subdivide the Development and/or dedicate or create streets, roadways or areas to be dedicated to public or private use, as each may be amended from time to time, which include rights of way for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof, or a subdivision plat recorded by Master Developer or a Neighborhood Builder for the purpose, among other things, of creating one or more legal lots for the development and construction of SFRs and/or MFUs and the sale thereof to members of the home-buying public and which establishes, among other things, streets and/or rights of way (which connect to the major arterial streets and rights of way established under Plat(s) previously recorded) for dedication to private use and/or for dedication to Peoria or other political subdivision with jurisdiction over the Development or the applicable portion thereof; provided, however, that any Plat as described herein shall be subject to the CSER and the Non-Exclusive License.
- (q) (x)-"Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement areas designated as "M.U.-&S.S.E." or "Multi-Use Easement" on the Plats, together with the streets (whether public or private) designated on the Plats.
- (r) (y)-"Pre-Wire Specifications" means those specifications for installation of inside wiring, outlets and trim in SFRs and MFUs as set forth in Exhibit D, that enable Communication Services to be properly delivered to Cox Customer Premises Equipment.
- (s) (z)-"SFR" means a single family detached or attached residence within the Development that is developed for sale, including a condominium or townhouse.
- (t) (aa)-"Technology Facilities" means all facilities, including, without limitation, on-site and off-site equipment installed for and/or used in the distribution of Communication Services by Cox to Vistancia, including but not limited to equipment cabinets, network interface units, conduit, lines, fiber, wires, cable, pipes, sleeves, pads, cross connect panels, fiber/T1 interfaces, cabling interfaces, patch panels and cords, routers/bridges, fiber transceivers, test equipment, power interfaces, service drop wiring and service laterals and other structures and improvements. The meaning of the term does not include Customer Premises Equipment.

(cc) (bb) "Telephone Services" shall mean local and long distance telephone service provided by Cox through one or more affiliates or third parties.

(dd) (ee) "Turnover Date" means (i) as to each Village Association, the date on which the Class B memberships in such Village Association are converted to Class A memberships pursuant to the terms of the Village Declaration pursuant to which such Village Association was established, (ii) as to Vistancia Maintenance Corporation, the date on which Master Developer's voting control of Vistancia Maintenance Corporation (in Master Developer's capacity as Declarant under the Master Declaration) terminates pursuant to the voting provisions of the Master Declaration, and (iii) as to any other Home Owners Association, the date, as provided for in the applicable voting provisions of the declaration of covenants, conditions and restrictions establishing such Home Owners Association, on which the declarant's voting control over such Home Owners Association will terminate.

(ee) (dd) "Unavoidable Delay" means a delay caused by events, circumstances or acts beyond a party's reasonable control. Such events, circumstances or acts may include, without limitation, and only to the extent beyond the affected party's reasonable control and not resulting from such party's failure or inability to fulfill a monetary obligation, an intervening act of God or public enemy, fire, hurricane, storm, adverse weather conditions, flood, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, geologic or archaeological conditions, contamination of soil or groundwater with hazardous materials, loss of power or utilities, power surges, quarantine restriction, freight embargo, act of war (declared or undeclared), riot, public discord, civil disturbance, act or threat of terrorism, sabotage or criminal damage, regulatory delay, litigation challenging the validity or enforceability of this CMA, change in law, regulation or policy prohibiting a party from performing its obligations, government expropriation of property or equipment, dissolution or disappearance of utilities, carriers or suppliers of unique materials or equipment or materials or equipment having long delivery periods, a failure to meet delivery schedules by any utility or by any carrier or supplier of unique materials or equipment or by any carrier or supplier of materials or equipment having long delivery periods, interruption or casualty in the transportation of materials or equipment or failure or delay by another party in the performance of an act that must be performed before the action that is delayed.

(ff) (ee) "Village Association" means each Village Association as defined in and formed pursuant to the Master Declaration and the applicable Village Declaration therefor.

(gg) (ff) "Village Declaration" means each Village Declaration as defined in and recorded pursuant to the Master Declaration, each as amended from time to time.

(hh) (gg) "Vistancia" means the SFRs and MFUs within the Development in Peoria, Arizona, as described in Recital A.

(ii) (hh) "Vistancia Maintenance Corporation" means the Arizona non-profit corporation organized or to be organized pursuant to the Master Declaration, its successors and assigns.

2. Term.

The initial term of this CMA (the "Initial Term") shall be for a period of 20 years, commencing on the Agreement Date. At the end of the Initial Term, this CMA will automatically renew for successive terms of five years each (each such five year term being hereinafter referred to as a "Renewal Term"), unless either party gives written notice of its intent not to renew to the other party at least 90 days prior to expiration of the Initial Term (or the Renewal Term then in effect, as applicable). The Initial Term and Renewal Terms are collectively referred to as the "Term." The Initial Term and any Renewal Term are subject to early termination as provided in Sections 10 and 11 of this CMA.

1. License and Access Rights.

- (a) **Development Process.** As used herein, the term "Development Process" means the application and processing by the Master Developer of each Plat, the recording of Declarations (including, without limitation, the Master Declaration, the Village Declarations, and all similar Declarations and filings contemplated by the Master Declaration and/or any Village Declaration), the filing of Maps of Dedication, and similar processes customarily utilized in the development of subdivisions; it being further understood that "Development Process" shall include, without limitation, the establishment of Platted Easement Areas along all streets and thoroughfares, together with such additional locations as may be reasonable or expedient in carrying out the intent of this CMA and the Non-Exclusive License.
- (b) **Grant of Non-Exclusive License.** The Access Entity and Cox agree to execute and record the Non-Exclusive License promptly ~~(and in all events within 20 days) following recordation of the CSER (in the form approved by Cox as provided in Recital E) concurrently with their execution of this CMA.~~ The parties agree that notwithstanding any contrary provision of this Non-Exclusive License, the following terms shall apply to the license and other rights granted to Cox pursuant to the Non-Exclusive License:
- (i) Neither the construction and installation nor the repair, replacement and maintenance of Technology Facilities by Cox shall unreasonably interfere with the development of the subdivision or with the use or enjoyment thereof by any Neighborhood Builder or subsequent owner of an SFR or MFU located within such subdivision.
 - (ii) Except for an emergency threatening damage to any property or injury to any person, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) upon any portion of a lot on which an SFR or MFU is constructed (except such portion as may be within the public right of way) after the first conveyance of such SFR or MFU to a buyer or other transferee who is entitled to receive by reason of such conveyance a subdivision public report pursuant to the Arizona Revised Statutes §32-2183, §32-2195.03 or any similar statute hereafter in effect without the prior consent of the then current owner of such SFR or MFU.
 - (iii) Notwithstanding any other provision hereof, in no event shall any holder or beneficiary of any rights granted under the Non-Exclusive License have the right to enter (by virtue of the Non-Exclusive License or otherwise) into the interior of any SFR or MFU or any structure related thereto and located thereon without the prior consent of the then current owner thereof.
 - (iv) During the Development Process, the Master Developer shall establish and delineate Platted Easement Areas, which shall be subject to the rights granted to Cox in the Non-Exclusive License. Notwithstanding any provision to the contrary, the Master Developer will also establish and delineate areas in which easements, licenses or similar rights may be granted either by operation of law, by express grant from the Master Developer and/or the Access Entity or any of their respective designees, or pursuant to the CSER and the Non-Exclusive License; provided, however, that such establishment and delineation shall not erode or lessen the rights conveyed under the CSER or the Non-Exclusive License. Master Developer, the Access Entity and Cox acknowledge and agree that the intent of this Section 3 and the Non-Exclusive License is to provide Cox with physically continuing easements, licenses and access rights throughout Vistancia, which allow Cox to reach each SFR and MFU within Vistancia in accordance with the terms of this CMA. In the event that the provisions of this Section 3 are not sufficient to accomplish this, Master Developer and the Access Entity shall grant or cause to be granted to Cox such additional, perpetual, non-exclusive easement rights or rights of access as are reasonably necessary to fulfill the intent of this Section 3, including, without limitation, any necessary easements or rights of access between non-contiguous Plats. In the event that Master Developer (and/or the Access Entity, as applicable) is unable or unwilling to

provide the additional easements or access rights referenced in the immediately preceding sentence, Cox may, in its sole discretion and in addition to any other rights it may have, (i) seek specific performance of Master Developer's (and/or the Access Entity's, as applicable) obligations hereunder and/or (ii) require Master Developer (and/or the Access Entity, as applicable) to reimburse Cox for the actual cost (plus reasonable expenses) of acquiring such easement rights.

- (v) Cox shall not unreasonably interfere with the use of the Platted Easement Areas by other providers of services or utilities, except as contemplated by the CSER and the Non-Exclusive License. Specifically, it is understood by Cox that sanitary sewer, storm sewer, natural gas, electricity, and other similar utility services may coexist with Cox in the Platted Easement Areas; and, further, that the Non-Exclusive License is non-exclusive and the Platted Easement Area may be utilized by other, even competitive, Common Service Providers as contemplated by the CSER, this CMA and the Non-Exclusive License.
- (c) **Pre-Wire Specifications.** Master Developer shall include in its contracts with Neighborhood Builders, as contemplated by subsection 6(b), the language regarding compliance with Pre-Wire Specifications set forth in item (b) of Exhibit A; provided, however, that if the Neighborhood Builder will not agree to such provision, then (i) Master Developer shall be permitted to delete such item (b) from its contract with the Neighborhood Builder, (ii) thereafter Master Developer shall work with Cox to obtain the agreement of such Neighborhood Builder to comply at its expense with the Pre-Wire Specifications in the construction of each SFR and MFU, as set forth in item (b) of Exhibit A, and (iii) Cox will bear the ultimate responsibility and cost of securing such agreement with the Neighborhood Builder.
- (d) **Post-CMA Closings.** As to subdivisions or parcels of property within the Development that have already been sold to Neighborhood Builders and/or are in escrow to be sold as of the Agreement Date, Master Developer agrees to use its diligent, good faith efforts to cause those Neighborhood Builders to comply with the applicable provisions set forth in subsection 3(c).
- (e) **Repair of Improvements.** Cox shall promptly repair and restore (to their condition existing immediately prior to such use by Cox, exclusive of normal wear and tear) any on-site or off-site improvements that are damaged or destroyed in connection with or arising from any use by Cox of the rights granted to Cox pursuant to this CMA and/or the Non-Exclusive License.

1. Communication Services & Technology Facilities Obligations of Cox.

- (a) **Preferred Right to Offer Communication Services.** During the Term of this CMA, Cox shall have the preferred right to market and offer the Communications Services (including future technology comprising all or part of the Communication Services as it becomes available) to residents of SFRs and MFUs in the Development, which preferred right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. In addition, Cox shall have the preferred right to provide Communication Services to each model home office in Vistancia operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer. Master Developer's only obligation in connection with the provisions of this subsection (a) relating to model homes and model home offices shall be to include the provisions set forth in Exhibit A in purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (i) Master Developer does not and cannot control the use or operation of any such model home or model home office by a Neighborhood Builder, and (ii) all obligations of Master Developer under this subsection (a) relating to model homes and model home offices of each

Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder. Notwithstanding the foregoing, the Master Developer shall pay to Cox, upon acceptance of this CMA, a nonrefundable payment in the sum of Three Million and No/100 Dollars (\$3,000,000.00), to be used by Cox for the cost of the installation of Technology Facilities for Cox to offer Communication Services at the initial phase of the Development (consisting of Village A and Trilogy). Cox shall be required to provide the Communication Services to residents of the initial phase of the Development upon occupancy of the first home in that phase. Master Developer's payment will be made in four equal installments of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) each at the beginning of each quarter, commencing April 1, 2003. As of the date of this CMA, Master Developer has paid to Cox three such installments in a total amount of \$1,125,000.00.

- (b) **Future Effect of CMA.** Notwithstanding any contrary provision of this CMA, this CMA (including, but not limited to, the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5) shall not be binding upon (i) any Home Owners Association or common area tract within the Development owned by any such Home Owners Association, following the Turnover Date for such Home Owners Association, (ii) Vistancia Maintenance Corporation or common area tract within the Development owned by Vistancia Maintenance Corporation, following the Turnover Date for Vistancia Maintenance Corporation, or (iii) any owner of any portion of the Development, other than any Neighborhood Builder that purchases any portion of Vistancia from Master Developer (to the extent provided in subsection 6(b)) and Master Developer. Without limiting the generality of the foregoing, Cox specifically agrees and acknowledges that the preferred right granted to Cox under subsection 4(a) and the exclusive rights granted to Cox under Section 5 may terminate at such time as Neighborhood Builders that purchased property within the Development from Master Developer are no longer operating model homes in the Development. ~~The compensation as set forth in Exhibit C (the "Marketing Compensation") will be paid to Master Developer for Master Developer's exclusive marketing and sales efforts on behalf of Cox. So long as Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay Master Developer the above-mentioned Marketing Compensation. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) continues to perform the exclusive marketing obligations contained herein in conformance with the provisions herein, Cox shall pay the compensation for the remainder of the Term to the Vistancia Maintenance Corporation.~~
- (c) **Cox Obligation to Provide Communication Services.** Cox agrees to make available, at a minimum, the following Communication Services to such phases, portions or subdivision parcels of the Development as are sold for development to Neighborhood Builders, or to other parties, through escrows that close during the Term of this CMA, which Communication Services shall be provided by Cox in accordance with the standards set forth in Exhibit E:
- (i) **Cable Television Services.** Subject to legal and regulatory constraints, Cable Television Services for each resident of any SFR or MFU that subscribes for such service; provided that Cox shall be entitled to cause such service to be provided directly or by or through a parent, subsidiary or Affiliate of Cox.
 - (ii) **Service Standard & Upgrades.** Cox shall upgrade the Cable Television Services within a reasonable time at no cost to Master Developer, any Neighborhood Builders, any Home Owners Association, or Vistancia Maintenance Corporation, to deliver a level of service that equals or exceeds the services being offered by substantially similar providers of such cable television services within the metropolitan statistical area of the community. If and when other products become commercially available, Cox will incorporate such future technology

services into the bundle of Communication Services being offered to Vistancia residents thereof, when it is technically, economically and operationally feasible to do so.

- (iii) **Telephone Service.** Subject to legal and regulatory requirements and availability of telephone numbers, Cox shall offer Telephone Service to each resident of any SFR or of any MFU that subscribes for such service; provided that Cox shall be entitled to provide such service by or through a parent, subsidiary or Affiliate of Cox, including but not limited to Cox Arizona Telcom, LLC; and provided further that Cox shall have access to buildings as necessary to provide the service.
- (iv) **Internet Access Service.** Subject to legal and regulatory constraints, Cox shall provide Internet Access Service for each resident of any SFR or MFU that subscribes to such service; provided that Cox shall be entitled to cause such service to be provided by or through a parent, subsidiary or Affiliate of Cox.
- (d) **Cox Obligation to Provide Technology Facilities.** Cox agrees to construct, provide, install, repair, replace and maintain all Technology Facilities required in order to provide the Communication Services to SFRs and MFUs within the Development at its sole cost and expense, provided that the Technology Facilities will be installed and provisioned over time, on a phased-in basis during the Initial Term of this CMA, so long as the Communication Services can be provided to each SFR and MFU upon initial occupancy thereof.
- (e) **Design & Installation Conditions.** Cox shall design and install the Technology Facilities (exclusive of the Pre-Wiring in the SFRs and MFUs which shall be the responsibility of the applicable Neighborhood Builder) in accordance with system architecture and schematic plans set forth in Exhibit B for those phases or portions of the Development in which Cox receives the access rights and interests contemplated under Section 3 of this CMA. However, Cox shall have no obligation to install the Technology Facilities or deliver the Communication Services to any phase or portion of the Development in which Master Developer or the applicable Neighborhood Builder has not, at its own expense: (1) constructed any buildings or structures required by Master Developer or the applicable Neighborhood Builder in which any Technology Facilities will be located; (2) performed the excavation, opening and closing (subject to the provisions of subsections 6(e) and 7(b)) of joint trenches to accommodate Cox's Technology Facilities on or serving such phase or portion of the Development (limited, in the case of trenches in the right of way dedicated to Peoria or other applicable governmental authority, to such Technology Facilities as Cox is permitted by such governmental authority, the CSER and Non-Exclusive License to install in such trenches), which joint trenches shall conform to the route and specifications provided by the APS plans for such trenches (it being agreed that any additional trenching beyond the APS route and specifications that may be necessary to accommodate Cox's Technology Facilities shall be in accordance with the Western States joint Trench Formula and shall be the responsibility of Cox and other utility companies in the trench as provided in subsection 4(e) and not the Master Developer or Neighborhood Builder; (3) installed the pre-wiring in all SFRs and MFUs in compliance with the Pre-Wire Specifications attached as Exhibit D; (4) provided to Cox, without charge, access to any building utility closets or rooms, related HVAC systems, foundation sleeves and pre-wiring (per the Pre-Wiring Specifications attached in Exhibit D) for all applicable SFRs, MFUs, and buildings; and (5) with respect to any portion of Vistancia conveyed to a Neighborhood Builder prior to the execution of this CMA, had all pre-wiring installed by the Neighborhood Builder reviewed and accepted as in compliance with the Pre-Wire Specifications.
- (f) **Selection of Contractors.** Cox shall select the Contractors to be used for installation of the Technology Facilities to be installed by Cox. Cox shall give written notice to Master Developer and the applicable Neighborhood Builder of the selection of Cox's Contractors and Cox will be responsible for providing such Contractors with plans, specifications and design detail for all Technology Facilities Cox installs.

- (g) **Construction & Installation.** Cox shall be solely responsible for providing, placing, constructing and installing the appropriate Technology Facilities, as necessary to provide the full range of Communication Services (subject to legal and regulatory restraints), in accordance with applicable law.
- (h) **Approvals, Permits & Compliance.** Cox shall be solely responsible for the following with respect to all work performed by Cox or its contractors, agents or employees: all reasonable and legally required consents, approvals, applications, filings, permits, licenses, bonds, insurance, inspections, construction, labor, material, equipment, tools, safety compliance, quality/ standards compliance, and compliance with all applicable laws, rules and ordinances.
- (i) **Ownership and Maintenance.** Cox at all times shall retain title to and control of the Technology Facilities. The Technology Facilities, or any portion thereof, shall not be considered fixtures, but the personal property of Cox (unless otherwise stipulated to in writing to Cox). Upon termination of this CMA, Cox shall retain title to and control of the Technology Facilities and, at its option, may either remove the Technology Facilities from the Development or leave such Technology Facilities in place at its own cost and expense. Cox shall operate, repair, replace and maintain all Technology Facilities at its own cost and expense.
- (j) **Early Termination Upon Cessation of Service.** In the event that Cox is unable to or is otherwise prevented from providing any of the Communication Services by legal or regulatory constraints, Master Developer shall have the right to terminate this CMA, in applicable part or in whole, as provided in Section 11, but shall not have the right to seek remedies of specific performance or damages for default.
- (k) **Individual Subscriber Basis.** Unless this CMA is amended in writing, the Communication Services provided by Cox under this CMA will be provided on an individual subscriber basis. The terms and conditions in the subscriber agreement regarding charges for Communication Services and Customer Premises Equipment (including as to the amount of any deposit, advance payment, rental or purchase of associated Customer Premises Equipment and installation or hookup fees) shall be the same as are generally available from Cox in Peoria and the area of the City of Peoria adjacent to Vistancia and/or as set forth in Cox's tariffs for local exchange as set forth with the Arizona Corporation Commission.
- (l) **Billing Subscribers.** Cox will be responsible for billing subscribers for the Communication Services. Cox shall not look to or otherwise hold the Master Developer, any Neighborhood Builder, any Home Owners Association, or Vistancia Maintenance Corporation liable or responsible in any manner for payment of individual subscriber fees or related costs (except fees for Communication Services provided directly to Master Developer, any Neighborhood Builder, any Home Owners Association or Vistancia Maintenance Corporation as a subscriber will be the responsibility of such subscriber). Cox reserves the right to terminate Communication Services to any subscriber who does not timely pay billed amounts or who otherwise fails to abide by the terms and conditions of its subscriber agreement.
- (m) **Model Home Service.** Cox shall make available in one main model home per Neighborhood Builder and the project information center (as designated by Master Developer), at Cox's sole cost and expense:
 - (i) **Digital Cable Television Service.** One "complimentary" (non-chargeable) digital Cable Television Service account (with Pay Per View and all premium paid services blocked) to a television provided by the Neighborhood Builder in the model home (until such model home is sold to an individual homebuyer), and to a television provided by Master Developer in the information center;
 - (ii) **Cox High Speed Internet Demo.** One "complimentary" (non-chargeable) Cox High Speed Internet demo to a computer provided by the Neighborhood Builder (until such model home

sold to an individual homebuyer), and to a computer provided by the Master Developer in the information center;

- (iii) **Signage at Point of Delivery.** Appropriate recognition of the benefit provided by Cox shall be given by way of reasonably visible signage provided by Cox at each point of delivery within the model home (with the size and location of same to be established by the reasonable mutual agreement of Cox and each Neighborhood Builder) and within the information center (with the size and location of same to be established by the reasonable mutual agreement of Cox and Master Developer).

5. **Exclusive Marketing Rights and Marketing-Incentive License Fees.**

(a) **Exclusive Rights of Cox. During the Term of this CMA:**

- (i) **Endorsement by Master Developer.** Master Developer shall endorse Cox exclusively as the preferred provider of the Communication Services to Vistancia;
- (ii) **Marketing and Promotion of Communication Services.** Master Developer hereby grants to Cox the exclusive right to market and promote the Communication Services in Vistancia, which exclusive right shall apply only (i) within any model home operated by a Neighborhood Builder that purchases any portion of the Development from Master Developer, and (ii) within any common area tract owned by a Home Owners Association or Vistancia Maintenance Corporation and made available by Master Developer for the marketing of Communication Services, provided that Cox's preferred right with respect to any such common area tract shall terminate upon the Turnover Date for the Home Owners Association (or Vistancia Maintenance Corporation, as applicable) that owns such common area tract. Master Developer's only obligation in connection with the provisions of this subsection (ii) relating to model homes shall be to include the provisions set forth in Exhibit A in certain purchase agreements and option agreements as provided in subsection 6(b) of this CMA, it being specifically acknowledged and agreed by Cox that (A) Master Developer does not and cannot control the use or operation of any such model home by a Neighborhood Builder, and (B) all obligations of Master Developer under this subsection (ii) relating to model homes of each Neighborhood Builder to whom it sells any portion of the Development shall be fully satisfied if Master Developer includes language substantially in the form of Exhibit A in its purchase agreement or option agreement with such Neighborhood Builder;
- (iii) **Similar Agreements and Co-Branding.** Master Developer and the Access Entity shall not enter into any arrangements similar to this CMA, or endorse or engage in promotional or marketing activities of any kind by or for the benefit of any other provider of Communication Services within Vistancia that are equivalent to the Communication Services, excepting only communication services that Cox elects not to or is incapable of providing and otherwise as expressly provided herein. Without limiting the foregoing, Master Developer and the Access Entity shall not enter into any agreement which permits the co-branding of the intranet home page or any advertising on the community pages by any provider of technology services within Vistancia that are equivalent to any of the Communication Services (including any Internet provider or gateway) other than: Cox High Speed Internet (residential or commercial).
- (iv) Master Developer and the Access Entity will not, either jointly or severally, directly or indirectly, extend to any person access to Vistancia for the purpose of providing any Communication Services under terms or conditions of access that: (a) provide for marketing compensation or license fees which, in the aggregate, allows a lower payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (b) provides for any

marketing compensation or license fees which taken individually (as to an individual SFR or MFU) allows a lower percent payment than is provided for Marketing Compensation under this CMA as set forth in Exhibit C pursuant to Schedule 3.01 of the Non-Exclusive License (including, without limitation, amendments or supplements thereto, which may subsequent to the date of this CMA), or (c) allow for the provision of any service of a lesser quality than is being offered by Cox pursuant to this CMA. Cox, Master Developer and the Access Entity acknowledge and agree that the rights in this section and other provisions in this CMA are intended to create a level playing field for all Communication Services providers, and not to provide discounts or competitive advantages to Cox. Notwithstanding any contrary provision of heretofore, this Section 5(a)(iv) shall terminate and be of no further force or effect (and no party to this CMA shall have any further rights, liabilities or obligations under this Section 5(a)(iv)) upon (a) any termination of the CSER (including, but not limited to, any mutual election by the Grantor and Grantee thereunder to terminate the CSER, which election may be made in the sole and absolute discretion of such parties), or (b) any exercise by the City of its right to convert the Multi-Use Easements (M.U.E.) to public utility easements (P.U.E.) in accordance with its rights set forth in Section 4.03 of the M.U.E.

- (b) Cox Marketing and Promotion Effort. Cox shall undertake to market and promote the Communication Services in an effective and diligent manner, all in accordance with the Marketing & Promotion Program set forth in Exhibit C.
- (c) Marketing Compensation. Cox shall pay to Master Developer a Marketing Compensation as set forth in Exhibit C, during the Term of this CMA; provided no Marketing Compensation shall be payable after termination of this CMA with respect to any Communication Service that is the subject of such termination except for Marketing Compensation accrued in respect of such Communication Service(s) but unpaid as of the date of such termination.
- (d) Reporting by Neighborhood Builders. During the Term of this CMA, Master Developer shall encourage the Neighborhood Builders to (i) deliver to Cox by the fifteenth day of each month a report of the identity of all buyers who have closed escrow for purchase of SFRs or MFUs during the prior month, and the respective dates of closing, and (ii) deliver to Cox any updates to such report on the last day of the month. To the extent any such report is not provided by a Neighborhood Builder, Master Developer shall provide such report, if requested to do so by Cox, but only to the extent such information is obtainable by Master Developer without additional cost or expense.
- (e) Master Developer Audit Rights. Within one year following Master Developer's receipt of any payment of Marketing Compensation, Master Developer shall have right to audit the books and records of Cox regarding the value of consumer subscription to Communication Services for the period covered by such payment of Marketing Compensation to verify the amount of Marketing Compensation due. All audits shall be conducted during normal business hours and upon reasonable prior written notice to the party being audited. All audits shall be conducted at the office in Arizona where the party being audited maintains the records to be audited. No records shall be removed from such offices by the auditor. Unless required by law or court order or as evidence in any dispute resolution proceedings, the auditing party shall not disclose any non-public information obtained in course of the audit. If as a result of an audit it is determined that any amount owing has been underpaid by more than 5%, the audited party shall reimburse the auditing party for the reasonable cost of the audit.

6. Technology Facilities Cooperation & Coordination by Master Developer.

- (a) Cooperation by Master Developer. Master Developer shall cooperate and coordinate with Cox in the design, permitting, construction and installation of the Technology Facilities described in Exhibit B and shall establish and implement procedures to facilitate the orderly and efficient design, permitting

and construction of the Technology Facilities in all phases of development of Vistancia during the Term of this CMA.

- (b) **Required Neighborhood Builder Provision.** Master Developer shall include provisions in substantially the form of Exhibit A attached hereto in each purchase agreement or option agreement entered into by Master Developer and a Neighborhood Builder during the Term of this CMA pursuant to which property within the Development is conveyed to such Neighborhood Builder for development with SFRs. Master Developer shall cooperate with Cox to the extent enforcement of the Neighborhood Builder's obligations under such provision is required; provided, however, that Master Developer shall not be a required party to any suit or arbitration initiated by Cox seeking to enforce any such Neighborhood Builder obligation. As to property within the Development that has already been sold to Neighborhood Builders and/or is in escrow to be sold as of the Agreement Date, Master Developer agrees to use its reasonable, good faith efforts to cause such Neighborhood Builders to agree to the provision set forth in Exhibit A. Notwithstanding any contrary provision of this CMA, Master Developer shall not be responsible or liable for any breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A, and in no event shall a breach or default by a Neighborhood Builder of its obligations under any provision in Exhibit A constitute a default by Master Developer under this CMA.
- (c) **Cooperation in Use of Technology Easements and Similar Use Right Areas.** Master Developer shall cooperate with Cox, at Cox's cost and expense, in Cox's efforts to obtain the non-exclusive right to utilize easements or similar use right areas established pursuant to Plats processed by Master Developer in respect of Vistancia.
- (d) **No Obligation of Cox to Build Sales Centers or Structures.** Cox shall not be obligated to construct or pay for any sales centers or other structures that are constructed or erected for the purpose of displaying Cox marketing materials, as required of Master Developer (as to common area tracts prior to the Turnover Date therefor) and/or any Neighborhood Builder (as to model homes) in which Technology Facilities are constructed, provided, installed, replaced, repaired and maintained under this CMA.
- (e) **Cox Trenching Obligations.** Unless otherwise provided for under this CMA or otherwise due to the failure of Cox to comply with the terms and provisions of this CMA, Cox shall not be obligated, except as provided for in this subsection 6(e), to perform or pay for the excavation, opening or closing of any joint trench on or serving any portion of Vistancia, or provide installation of the building sleeves from the joint trenches to any building, all of which shall be and remain solely the responsibility of Master Developer and/or the applicable Neighborhood Builder(s). Cox will provide, at its sole cost and expense, the conduits and drop cables to be installed by each Neighborhood Builder in its subdivision. Notwithstanding any contrary provision hereof, if Cox determines that any trenching is necessary to accommodate Cox's Technology Facilities that is wider than, deeper than, or otherwise beyond or different from the APS route and specifications (such trenching being hereinafter referred to as "Additional Trenching"), then Cox shall reimburse to Master Developer (or the applicable Neighborhood Builder, if it installs the Additional Trenching) a proportionate share of the cost thereof. Cox shall provide notice to Master Developer and the applicable Neighborhood Builder of the need for any Additional Trenching prior to Master Developer's (or the Neighborhood Builder's, as applicable) commencement of construction of the trench that requires any such Additional Trenching. Cox will pay the cost of Additional Trenching based on the Western States joint Trench Formula.

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

- (a) **Installation of Technology Facilities.** Cox shall (i) cooperate and coordinate with Master Developer and the applicable Neighborhood Builders in the design and construction of the Technology Facilities described in Exhibit B for those portions of Vistancia that are sold by Master Developer for development of SFRs to Neighborhood Builders through escrows that close during the Term of this

CMA, (ii) commence and complete its design, construction and installation obligations in a timely and effective manner, in accordance with Master Developer's (or the Neighborhood Builder's as applicable) construction schedule for a particular subdivision parcel or neighborhood, and (iii) keep Master Developer and the applicable Neighborhood Builder fully and timely informed throughout the course of design and construction. Without limitation of the foregoing, Cox shall make the design for the Technology Facilities for any given subdivision parcel or neighborhood, as applicable, available to Master Developer and, if applicable, the Neighborhood Builder upon completion; provided, however, that in all events Cox must make such design available in sufficient time to accommodate Cox's design within the plans/design for the trench in which the applicable Technology Facilities will be installed. Master Developer and, if applicable, the Neighborhood Builders, shall have five business days to discuss the design with Cox so that the planning and progress of Vistancia or such subdivision will not be interrupted or adversely impacted.

- (b) **Timely Delivery of Plans.** At all times during the Term of this CMA, and at all relevant times thereafter, Cox will provide to Master Developer or the applicable Neighborhood Builder wiring routing plans for all Technology Facilities that Cox intends to construct and install at the Development or the applicable subdivision parcel sufficiently in advance of such planned construction and installation of Technology Facilities so as to permit and facilitate timely and cost-effective coordination and cooperation by the respective parties in the performance of the development work to be performed by each. Master Developer and/or any Neighborhood Builder shall provide no less than ten (10) business days notice to Cox of the final date for installation of Technology Facilities within any trench constructed by Master Developer or such Neighborhood Builder. So long as the foregoing notice has been provided, in no event shall Master Developer or any Neighborhood Builder be required or obligated to re-open a completed trench to accommodate the installation of any Technology Facilities, which re-opening shall be the sole responsibility and expense of Cox.
- (c) **Governmental Permits.** Cox will be responsible for obtaining all governmental permits and licenses, zoning variances and other governmental approvals, at Cox's sole cost and expense, that are required for the construction and installation of the Technology Facilities by Cox.
- (d) **Warranty.** Cox makes no warranty, expressed or implied, as to the design or construction of the Technology Facilities, except that Cox represents and warrants that the Technology Facilities installed by Cox:
 - (i) Are owned by Cox without the right of any other person or party to remove or alter the same; and
 - (ii) Shall provide the Communication Services and otherwise satisfy the operating specifications and parameters set forth in this CMA.
- (e) **Construction Manager.** Cox shall appoint a manager to act as a single point of contact for coordination and cooperative implementation of procedures for resolving day-to-day construction issues within Vistancia.
- (f) **Marketing of Apartment Parcels.** Cox will cooperate with Master Developer during the Term to present to potential purchasers of apartment parcels and developers of MFUs a selection of arrangements for the provision of Technology Facilities and Communication Services to such properties. Such arrangements may include, but not be limited to, an offering of bulked services at discounted rates, if allowed by law, or an offering of consideration to the purchaser/ developer in exchange for exclusive marketing rights. Developer shall use its reasonable efforts to include Cox in discussions with any such potential purchaser/developer of an apartment or other MFU parcel, in order for Cox to present such selection and initiate direct discussions and negotiations thereof with the potential purchaser/developer.

8. **Insurance; Indemnification; Waiver of Subrogation.**

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

9. **Representations and Warranties**

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

knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.

- (iv) **No Litigation.** There is no litigation served on Master Developer, which challenges Master Developer's authority to execute, deliver or perform this CMA, and the executive management of Master Developer has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Master Developer is in material compliance with all laws and regulations applicable to Master Developer's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Master Developer has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

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

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

(c) **By Access Entity.** Access Entity hereby represents and warrants to Cox as follows:

- (i) **Organization and Authority.** Access Entity is a duly organized limited liability company created under the laws of the State of Arizona, is qualified to engage in business in the State of Arizona, has the requisite power and all required governmental approvals to carry on its present and proposed activities, and has full power, right and authority to enter into this CMA and to perform each and all of the obligations of Access Entity provided for herein and therein.

- (ii) **Due Execution.** Each person who, in the name of Access Entity, executes this CMA has been duly authorized to execute this CMA on behalf of Access Entity.
- (iii) **No Conflict.** Neither the execution and delivery by Access Entity of this CMA, nor the consummation of the transactions contemplated hereby, is at the time executed in conflict with the governing instruments of Access Entity or any other agreements or instruments to which it is a party or by which it is bound; and as of the Agreement Date, and without otherwise limiting or qualifying the other representations, warranties and covenants of Access Entity under this CMA, the executive management of Access Entity has no knowledge of any written notice asserting a claim that might reasonably be expected to materially impair the use of the Communication Services.
- (iv) **No Litigation.** There is no litigation served on Access Entity, which challenges Access Entity's authority to execute, deliver or perform this CMA, and the executive management of Access Entity has no knowledge of any threatened litigation with respect to such matters.
- (v) **Compliance with Law.** Access Entity is in material compliance with all laws and regulations applicable to Access Entity's activities in connection with this CMA.
- (vi) **No Conflicting Rights.** Access Entity has granted no exclusive or equivalent rights to any other provider of Communication Services within Vistancia that are comparable to Cox's preferred provider status with respect to the Communication Services hereunder, prior to the Agreement Date.

10. **Default and Remedies.**

- (a) **Events of Default.** Except in case of Unavoidable Delay (in which event the time for performance hereunder shall be extended by the period of time that such Unavoidable Delay exists), each of the following circumstances shall constitute a default under this CMA, in which case the non-defaulting party shall have the remedies provided below and in Section 11 with respect to the type of default that has occurred:
 - (i) **Monetary Default.** A party shall be in "Monetary Default" upon failure to pay any sum of money due hereunder or under the Non-Exclusive License within 30 days after receipt of written notice that payment is delinquent.
 - (ii) **Performance Default.** A party shall be in "Performance Default" if the party fails to perform any obligation hereunder or under the Non-Exclusive License (other than an obligation which the failure to perform results in a Monetary Default) when performance is due and commence the cure thereof within 30 days of receipt of notice of the failure and diligently prosecute such cure to completion.
- (b) **Remedies for Monetary Default.** In the event of a Monetary Default, the non-defaulting party shall have the right to recover the amount determined to be due in accordance with the applicable dispute resolution procedure of Section 12, together with interest thereon from the date such amount was due until paid at the rate of 12% per annum.
- (c) **Remedies for Performance Default.** In the event of a Performance Default, the nondefaulting party shall have the right to cure on behalf of the defaulting party any default hereunder, and to obtain reimbursement from the defaulting party for the cost of such cure, together with interest thereon from the date such cost was paid until reimbursed at the rate of 12% per annum, in accordance with the applicable dispute resolution procedure of Section 12. The non-defaulting party shall have the right to offset against the amount due any amount then due, or thereafter becoming due, to the defaulting party

from the non-defaulting party after such amount has been determined in accordance with the applicable dispute resolution procedure of Section 12.

- (d) **Cox Additional Remedies.** In the event of a Performance Default by Master Developer or Access Entity, Cox shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (e) **Master Developer and Access Entity Additional Remedies.** In the event of a Performance Default by Cox, Master Developer (or Access Entity, as applicable) shall have the right to collect actual damages, obtain specific performance or injunctive relief in accordance with the applicable dispute resolution procedure of Section 12.
- (f) **Termination.** The non-defaulting party shall have the right to terminate, cancel or rescind this CMA as provided for in the applicable subsections of Section 12.
- (g) **Monetary Damages.** The non-defaulting shall have no right to obtain monetary damages except as expressly provided in this Section 10.
- (h) **No Consequential Damages.** The defaulting party shall have no liability for incidental, indirect, consequential or punitive damages.
- (i) **CSER and License.** No breach or default under this CMA by either party shall have any effect upon, nor shall any such breach or default impair or lessen, directly or indirectly, the rights or obligations created by the CSER and the Non-Exclusive License (except in the event of termination of this CMA due to such default, in which event the rights and obligations of the parties shall be as provided in Section 11 below); the parties hereto representing and acknowledging that the CSER and Non-Exclusive License are independent of this CMA (subject to the provisions of Section 10(a) above and Section 11 below).

11. **Termination and Partial Termination; Rights of Parties after Termination.**

- (a) **Additional Rights to Terminate.** In addition to termination on expiration of the Initial Term as provided in Section 2 or termination as permitted under Section 10, this CMA may be terminated or partially terminated under the following circumstances:
 - (i) **Cessation or Interruption of Communication Service.** In the event Cox is unable or otherwise fails to provide Cable Television or Internet Access Service to Vistancia or any portion thereof, due to loss of its license from City of Peoria or otherwise, or in the event Cox is unable or otherwise fails to provide Telephone Service directly or through a third party to Vistancia or any portion thereof, or in the event that Cox discontinues providing any such Communication Service for any reason whatsoever, Master Developer shall have the right to terminate this CMA effective as of the time that Cox ceased to provide the affected Communication Service.
 - (ii) **Master Developer Determination.** If Master Developer determines that Cox has failed to provide the Communication Services, or any component thereof (e.g., Internet Access Services, Cable Television Service, Telephone Services) in a timely, satisfactory and/or otherwise consistent with the spirit and intent of this CMA, Master Developer shall give Cox a written explanation of such determination and the reasons therefor. Cox must respond to Master Developer, in writing, within 10 business days of receipt of such determination and explanation, including an explanation of its response and/or, if applicable, its proposed plan of resolution. Thereafter, within ten (10) business days of Master Developer's receipt of Cox's response, the parties shall meet, in person or telephonically, in order to discuss their differences. Within 10 business days following such meeting (or if Cox is unable or otherwise

fails to meet with Master Developer within such 10-business-day period, within 20 business days of Master Developer's receipt of Cox's response, or if Cox failed to timely respond to Master Developer's initial communication, within 30 business days of Cox's receipt of Master Developer's initial determination), Master Developer shall communicate to Cox, in writing, any remaining unresolved issues. Thereafter: (1) Cox may elect to initiate the mediation process provided for in Section 12(a), by notice to Master Developer within 5 business days of receipt of Master Developer's list of unresolved issues, following which mediation process Master Developer may either terminate this CMA or, if Master Developer does not terminate this CMA, this CMA shall remain in full force and effect; or (2) if Cox fails to timely initiate the mediation process provided for in Section 12(a), and thereafter fails to resolve such issues to Master Developer's reasonable satisfaction within 30 days of receipt of Master Developer's list of unresolved issues, Master Developer shall be entitled to terminate this CMA by notice of termination to Cox.

(b) **Continuing Rights & Obligations.** After a termination or partial termination, the continuing rights and obligations of Cox and Master Developer shall be as follows:

(i) **Termination Upon Default or Other Termination or Expiration.** From and after the expiration or earlier termination of this CMA (including, but not limited to, any termination due to uncured default): (A) the Non-Exclusive License shall remain in effect with respect to, and Cox shall continue to have the rights of access to, each SFR and MFU provided by all Platted Easement Areas contained on Plats that have been recorded as of the date of such expiration or termination, and (B) Cox may continue to deliver Communication Service to the SFRs and MFUs located within such Plats, and install, operate and maintain its Technology Facilities within such Platted Easement Areas, all in accordance with the terms of the Non-Exclusive License. No termination or expiration of this CMA shall terminate or restrict in any way the rights that Cox has or may have under the Non-Exclusive License or by applicable law or regulation to offer and provide Communication Services to residents of SFRs and MFUs located within Plats that have been recorded as of the date of such termination or expiration; but, the Non-Exclusive License shall terminate with respect to, and unless otherwise required by applicable law or regulation, Cox shall have no further right to offer and provide Communication Services or install Technology Facilities within any portion of the Development that has not been subjected to or included within a recorded Plat as of the date of such expiration or termination. After termination or expiration, Master Developer and/or the Access Entity shall have the right to enter into a preferred provider or other similar agreement with another communication services provider, including granting of one or more non-exclusive license agreement(s) on terms that are the same as or different from the Non-Exclusive License; provided that Cox may continue to serve those existing residents within the areas described above in this subsection that desire to continue subscribing to Cox's Communications Services.

(ii) **No Obstruction.** Regardless of the reason for termination, Master Developer shall not obstruct, interfere with or discriminate against any efforts by Cox to enter into an arrangement with Peoria or other applicable governmental authority for installation, use, maintenance and operation of Technology Facilities in Peoria or other applicable governmental right of way, and/or with a Neighborhood Builder for the provision of Technology Facilities or Communication Services in an area outside of Vistancia. Cox acknowledges and agrees, however, that any exercise by the Access Entity of its rights under the CSER shall not constitute a violation of the foregoing provision.

(c) License Fees under the Non-Exclusive License. The Non-Exclusive License provides for the payment of a License Fee by Cox to the Access Entity. The License Fee shall be payable by Cox to the Access Entity during the Term of this CMA, provided no License Fee shall be payable after termination of the CMA with respect to any Communication Service that is the subject of such termination, except for License Fees accrued in respect of such Communication Service(s).

but unpaid as of the date of such termination. So long as the Master Developer maintains a majority vote in the Vistancia Maintenance Corporation, Cox will continue to pay the License Fee to the Access Entity. Upon the Turnover Date for Vistancia Maintenance Corporation, this CMA shall be assigned by Master Developer in its entirety to the Vistancia Maintenance Corporation, and as long as the Vistancia Maintenance Corporation (acting in its own capacity and/or through one or more Village Associations) does not terminate this CMA (and continues to perform under this CMA), Cox shall pay the compensation for the remainder of the Term in the Vistancia Maintenance Corporation.

(d) (e)-Unwinding. Upon the expiration or earlier termination of this CMA, the parties shall take such actions (and otherwise assist each other) in such reasonable and prudent time and manner as is appropriate in order to "unwind" the co-marketing and other relationships established under this CMA, including, without limitation:

- (i) Removal of Property. Within 30 days after the expiration or earlier termination of this CMA, (1) Cox shall remove any and all of their other facilities, equipment, furnishings and other items of personal property which are located within improvements or structures, or otherwise on property, owned by Master Developer, Vistancia Maintenance Corporation, any Home Owners Association, or any Neighborhood Builder; and (2) Master Developer shall remove any and all of its facilities, equipment, furnishings and other items of personal property which are located within or on property owned by Cox;
- (ii) Destruction of Co-Branded Materials. Each party shall eliminate, destroy and cease the use of any co-branded or joint marketing materials produced under or in accordance with this CMA; and
- (iii) Intranet Disconnection. Cox shall disconnect from the Cox Technology Facilities any electronic connections and/or electronic interfaces with respect to "Vistancianet" and Master Developer shall remove all of its equipment used in the operation of "Vistancia net" from the property owned by Cox.

12. Dispute Resolution Mechanisms.

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

- (a) Mediation. In the event that there is an unresolved dispute not provided for in any other Section of this CMA, either party may make written demand for mediation to the other party and to a mediator mutually acceptable to the parties (the "Mediator"). Within five (5) business days after receipt of such demand, the responding party may forward to the Mediator and the initiating party a written response setting forth any other issues and concerns which they believe are relevant to the issues presented for mediation. Unless otherwise agreed, once a demand for mediation has been filed, there shall be no ex parte communications with the Mediator.
- (b) Information. A Mediator shall promptly determine if all parties are in possession of adequate information necessary to evaluate the issues and concerns set forth in the demand notice and/or the response thereto (collectively the "Claims"). In the event he deems that they are not, he shall utilize his best efforts to obtain the information in a prompt manner. The Mediator shall immediately prepare and deliver an agenda to both parties within fifteen (15) days after the demand for mediation was received. The Mediator shall then schedule a conference among the parties, to occur within thirty (30) days after the demand for mediation was received. The conference will be attended by the persons most familiar with the issues set forth in the Claims, and by a representative of each party, who is authorized to act on

behalf of such party as to reaching an agreement on the Claims. The Mediator shall lead negotiations between the parties upon preparation of a written summary by the Mediator. The proceedings and all documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations, and not subsequently admissible at any further proceeding, except for the summaries of agreements prepared by the Mediator and acknowledged by the parties. The cost of the Mediator shall be borne equally by both parties. Upon a determination by the Mediator that further negotiations are unlikely to achieve further meaningful results, he shall declare the mediation procedure terminated, and any matter not resolved may be referred to arbitration as provided below.

- (c) **Arbitration.** Either party may demand arbitration by giving the other party written notice to such effect, which notice shall (i) describe, in reasonable detail, the nature of the dispute, controversy or claim and (ii) name an arbitrator who is experienced in the subject matter of the issue and dispute. Within ten (10) days after the other party's receipt of such demand, such other party shall name the second arbitrator who is experienced in the subject matter of the issue in dispute. The two arbitrators so named shall select a third arbitrator who is also experienced in the subject matter of the issue in dispute.
- (d) **Costs & Fees.** Master Developer and Cox shall each bear fifty percent (50%) of all fees, costs and expenses of the arbitration, and each party shall bear its own legal fees and expenses, and costs of all experts and witnesses; provided, however, that if the claim by the party is upheld by the arbitration panel and in all material respects, then the arbitration panel may apportion between the parties as the arbitration panel may deem equitable the costs incurred by the prevailing party.
- (e) **Procedures.** The party demanding arbitration shall request the arbitration panel to (i) allow for the parties to request reasonable discovery pursuant to the rules that are in effect under the State of Arizona Superior Court Rules of Civil Procedure for a period not to exceed sixty (60) days prior to such arbitration and (ii) require the testimony to be transcribed.
- (f) **Award Final.** Any award rendered by the arbitration panel shall be final, conclusive and binding upon the parties and any judgment thereon may be entered and enforced in any court of competent jurisdiction.

13. **Assignment.**

- (a) **No Assignment.** Neither Cox nor Master Developer may assign this CMA or its rights under this CMA or delegate its responsibilities for performance under this CMA, and no transfer of this CMA by operation of law or otherwise shall be effective, without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed if it occurs prior to the expiration, termination or partial termination of this CMA and which may be withheld in the sole and absolute discretion of the party whose consent is required if it occurs following the expiration, termination or partial termination of this CMA), except as provided in subsections (b) or (c).
- (b) **Master Developer.** Master Developer shall have the right to assign its right, title and interest (and to be concurrently relieved of related liabilities assumed in writing), without Cox's consent (i) to any other developer in connection with an assignment of substantially all of the then existing interest of Master Developer in Vistancia; (ii) to any entity which has, directly or indirectly, a 30% or greater interest in Master Developer (a "Master Developer Parent") or in which Master Developer or a Master Developer Parent has a 30% or greater interest (a "Master Developer Affiliate"); (iii) to any entity with which Master Developer and/or any Master Developer Affiliate may merge or consolidate; (iv) to a buyer (whether by sale or exchange) of substantially all of the outstanding ownership units of Master Developer; or (v) to the Access Entity or to any other entity that controls the utility easements or other rights in the areas where the Communication Services are located. Any such assignment by Master Developer shall not be effective until the assignee signs and delivers to Cox a document in which the assignee assumes responsibility for all of Master Developer's obligations under this CMA arising from

and after the effective date of assignment and if such assignee has entered into a written agreement, in form reasonably acceptable to Cox, assuming, without condition, reservation or exception, the obligations of Master Developer under this CMA that are to be performed after the effective date of the assignment, then Master Developer shall be relieved of all responsibility for performance of its obligations under this CMA which arise after the effective date of the assignment.

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

14. Miscellaneous.

- (a) Amendments. No amendment of this CMA shall be effective unless made in writing executed by both Master Developer and Cox (and by Access Entity, to the extent any such amendment affects or relates to the obligations or agreements of Access Entity hereunder).
- (b) Integration. The parties agree that this CMA, including all exhibits hereto, and the grant of easements or other assurances of access pursuant hereto (including, but not limited to, the Non-Exclusive License), constitute the entire agreement and understanding between Master Developer, the Access Entity and Cox with respect to the subject matter covered thereby and supersede all prior agreements except those referred to herein, representations and understandings, written or oral, between Master Developer, the Access Entity and Cox with respect to such subject matter.
- (c) Attorneys' Fees. In the event of any dispute or legal proceeding (including judicial reference and arbitration) between the parties arising out of or relating to this CMA or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees and disbursements (and specifically including fairly allocated costs of in-house counsel), incurred in connection with such dispute or legal proceeding, any counterclaims or cross-complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court, referee or arbitrator determines reasonable. Any party entering a voluntary dismissal of any legal proceeding without the consent of the opposing party in such proceeding shall be deemed the nonprevailing party.
- (d) Unenforceability. The determination that any provision of this CMA is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

- (c) **Governing Law.** This CMA shall be governed by and construed in accordance with the laws of the State of Arizona.
- (f) **Notices.** Any notice or demand from one party to the other under this CMA shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the other party set forth on the signature page of this CMA. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. A party may from time to time designate any other address for this purpose by written notice to the other party.
- (g) **Relationship of Parties.** The relationship of Master Developer and Cox (and of the Access Entity and Cox) shall be one of independent contractors, not as agent, partner, joint venturer or employee.
- (h) **Third Party Beneficiaries.** Nothing contained in this CMA is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this CMA.
- (i) **Waiver.** No waiver by any party of any right or remedy under this CMA shall be deemed to be a waiver of any other or subsequent right or remedy under this CMA. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (j) **Writing Required.** No act, delay or omission done, suffered or permitted by one party to this CMA shall be deemed to waive, exhaust or impair any right, remedy or power of such party hereunder, or to relieve the other party from full performance of its obligations under this CMA. No waiver of any term, covenant or condition of this CMA shall be valid unless in writing and signed by the obligee party. No custom or practice between the parties in the administration of the terms of this CMA shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this CMA.
- (k) **Brokerage.** Each party to this CMA represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this CMA. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this CMA.
- (l) **Additional Documents.** Each party hereto shall execute and deliver such additional instruments as may from time to time be necessary, reasonable and/or appropriate and requested by another party in order to implement and carry out the obligations agreed to hereunder.
- (m) **Continuing Effect.** All covenants, agreements, representations and warranties made in or pursuant to this CMA shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the Term.
- (n) **Meaning of Certain Terms.** When the context so requires in this CMA, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the word "include" or "including" is intended as an introduction to illustrative matters and not as a limitation. References in this CMA to "Sections" or "subsections" are to the numbered and lettered subdivisions of this CMA, unless another document is specifically referenced. The word "party" when used in this CMA means Master Developer, the Access Entity or Cox unless another meaning is

required by the context. The word "person" includes individuals, entities and governmental authorities. The words "government" and "governmental authority" are intended to be construed broadly and include governmental and quasi-governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity. The word "laws" is intended to be construed broadly and includes all statutes, regulations, rulings and other official pronouncements of any governmental authority and all decrees, rulings, judgments, opinions, holdings and orders of a court, administrative body or arbitrator.

- (o) **Rules of Construction.** The language in all parts of this CMA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. The parties hereto acknowledge and agree that this CMA has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this CMA with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this CMA, this CMA shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- (p) **Counterparts.** This CMA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (q) **Proprietary Information.** Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information", and each party agrees that it will not, during or after this CMA terminates, permit the duplication, use, or disclosure of any such Confidential Information to any person not authorized by the disclosing party, unless such duplication, use or disclosure is specifically authorized by the other party in writing prior to any disclosure, provided that neither party shall have any obligation with respect to any such information that is, or becomes, publicly known through no wrongful act of such party, or that is rightfully received from a third party without a similar restriction and without breach of this CMA. Each party shall use reasonable diligence, and in no event less than that degree of care that such party uses in respect to its own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of such information. Without limiting the generality of the foregoing, to the extent that this CMA permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this CMA as shown by the recipient's written records, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- (r) **Recordings.** Master Developer agrees to execute and record documents which will establish Cox's easement rights on plats and maps of dedication, by labeling such easements as "D.M.U. & S-E₂" areas in accordance with the terms and conditions of the CSER and Non-Exclusive License, as such documents are prepared by the Master Developer.

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

"Master Developer"

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

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

~~SHEA SUNBELT PLEASANT POINT VISTANCIA~~
LLC, a Delaware limited liability company

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

By: _____
Its: _____

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

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

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

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

"Coa"

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

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

By: _____
J. Steven Rizley
General Manager and VP

"Access Entity"

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

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

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

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

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

By: _____
Its: _____

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

EXHIBIT A

Contract Provision - Purchase and Sale Agreements with Neighborhood Builders

Seller has entered into that certain Amended and Restated Co-Marketing Agreement dated September 25, 2003 with Coxcom, Inc., a Delaware corporation d/b/a Cox Communications Phoenix ("Cox") on behalf of itself and its affiliated entities, a true and correct copy of which, together with all amendment(s) thereto (if any) that have been executed as of the date of this Agreement (such Amended and Restated Co-Marketing Agreement and amendment(s) being hereinafter referred to as the "CMA") has been provided by Seller to Buyer. Buyer acknowledges and agrees that it is a "Neighborhood Builder" as defined in the CMA. Buyer hereby agrees that during the term of the CMA:

- (a) Buyer shall provide substantially the same cooperation and coordination with Cox as agreed to by Master Developer pursuant to Section 6(a) of the CMA;
- (b) Buyer shall observe the Pre-Wire Specifications set forth in Exhibit D of the CMA and shall install the material referenced therein, in accordance therewith, in each residence constructed by Buyer on the Property, all at the sole cost and expense of Buyer;
- (c) Cox shall have the exclusive right to market and promote Communication Services (as defined in the CMA) within any model home operated by Buyer within the Property;
- (d) In all of their media and print materials that are specific to Vistancia (i.e. "stand alone" media and print materials relating only to Vistancia that do not include any other communities or projects), Buyer and Seller shall advertise Vistancia in all its media and print materials as a "Cox Digital Community" by including the Cox Digital Community logo (to be provided by Cox);
- (e) Cox shall have the preferred right to provide Communication Services to each model home office operated by Buyer within the Property;
- (f) Buyer shall provide, and pay the cost of providing (i) access by Cox to all necessary utility distribution trenches within the Property, which trenches shall comply with the route and specifications provided by the APS plans therefor, and (ii) the building sleeves from utility distribution trenches to each residence constructed by Buyer on the Property.
- (g) Cox is intended to be a third-party beneficiary of all of the foregoing provisions of this Section and, as such, shall have the right to enforce this Section.

[As used in the foregoing provision, the term "Seller" would refer to Master Developer and the term "Buyer" would refer to the Neighborhood Builder, and the term "Property" would refer to the real property within Vistancia being purchased by the Neighborhood Builder pursuant to the particular purchase agreement or option agreement.]

EXHIBIT A
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EXHIBIT B

Technology Facilities

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

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

EXHIBIT C

Cox Digital Community Marketing & Promotion Program

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

Master Developer will assist Cox in meeting and communicating with Neighborhood Builders to educate them and their sales and leasing agents about, and encourage them to actively participate in the Cox Digital Community Marketing & Promotion Program;

All marketing support provided by Cox under the Cox Digital Community Marketing & Promotion Program will be mutually agreed upon by both parties and will be through the advertising agency chosen by Cox. Cox will provide a marketing campaign that will include the following:

Marketing Support will be in combination of several advertising/ marketing mediums beneficial to Cox and Master Developer, which will include, but not be limited to the following:

- 1) Support the cost to develop and print customized literature highlighting the Vistancia Community and partnership with Cox. All material will be subject to prior review and reasonable approval of each party co-branded with Cox and Master Developer trade names and trademarks.
- 2) A minimum of one month advertising in a local homebuilder/ developer publication which will include the Cox digital logo and mutually agreed upon content by both Cox and Master Developer.
- 3) Assist in establishing a partnership with Cable Rep, an affiliate of Cox Communication, and Master Developer and to use reasonable efforts to obtain Cable Rep's approval to receive discount cross channel promotional advertising highlighting Vistancia Community. All advertising will be subject to prior review and reasonable approval of each party co-branded with Cox and Master developer trade names in the trademarks.
- 4) Participation in any future "Cox Digital Community" media campaigns that occur: Master Developer will be given first right of refusal to participate in campaign(s) before being offered to any other Master Developer/ Community. Any specific builder media campaign developed by Cox will be exempt, unless builder is an active participant in Vistancia Community, wherein Cox will take every opportunity to promote the Master Developer/ Builder/ Cox Partnership, highlighting Vistancia.
- 5) Support of any Grand Opening activities highlighting the Vistancia Community. Cox's participation would include, but not be limited to, product information booths with active product demonstrations, manpower assistance, banners with logos highlighting the partnership and advertising assistance.
 - (a) provide literature to the sales office highlighting Cox services
 - (b) all of the above will require regular meetings and will include Master Developer and Cox to confer at mutually convenient times to formulate, evaluate and modify marketing plans and to prepare, review and modify promotional brochures, packages, advertisements and other collateral materials;
 - (c) cooperate to create and use co-branded promotional and sales brochures, packages and other collateral materials for Vistancia that will reference Vistancia partnership with Cox Communications and will include the "Cox Digital Community", the form and content of which will be subject to the prior reasonable approval of each party,

- (d) introduce and coordinate the respective marketing programs, sales and marketing agents;
- (e) highlight the Communication Services in meetings with prospective buyers and at other opportune times during the marketing process;
- (f) provide prospective buyers with the most current information and promotional brochures and materials;
- (g) offer training to Master Developer's agents to include training by a Cox Sales Coordinator with respect to the marketing of Communication Services and the policies and procedures respecting the same, and Master Developer shall make such agents available for such training on a reasonably acceptable schedule;
- (h) seek to include Cox's subscription agreement for video and data, which shall include the Acceptable Use Policy, and description of all services in each escrow package and/or New Homeowners welcome folders;
- (i) include Cox's name and a brief description of Cox's services, a Cox digital logo, in all applicable written, oral and electronic advertisements of Vistancia or any phase thereof whenever such advertisements describe the technology aspects of the amenities or services;
- (j) when available promote use of the Cox High Speed Internet demo's in the main Model Sales Offices of the Neighborhood Builders;
- (k) allow Cox to use technology displays as a model to advertise, demonstrate, promote and develop the Communication Services and to conduct third party tours (excluding tours for owners, agents and promoters of other master planned communities in Peoria or other applicable governmental authority and excluding other telecommunications services providers), including producing photographs, video tape, film or other media presentations relating to provision of Communication Services to the Property;
- (l) encourage all parties directly associated with the sale or lease of SFRs of MFUs to:
 - (1) utilize the Technology demos as a primary component of their marketing and promotional efforts, including directing and encouraging prospective purchasers to visit it as the central source of information on Communication Services;
 - (2) provide prospective buyers with a copy of information and promotional brochures and materials most recently provided by Cox for Vistancia residents;
 - (3) include signage and brochures of Cox in model units and other Common Area facilities to be jointly determined by Cox and Master Developer and/or Neighborhood Builders;
 - (4) participate in training respecting marketing Communication Services and policies and procedures respecting marketing;
 - (5) include brief descriptions of products and services in advertisements;
 - (6) incorporate into the New Homebuyers Information folders, "only" Cox sales packages information and materials when referring to technology providers for Vistancia, SFRs being developed and Communication Services expected to be a part thereof.
 - (7) provide notice of pending escrow closings

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EXHIBIT D

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

SFR and MFU INSIDE WIRING

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

CABLE TELEVISION/INTERNET ACCESS WIRING

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

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

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

EXHIBIT E

Technology & Service Standards

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

EXHIBIT F

Insurance Requirements

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

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

EXHIBIT G

Marketing Compensation Schedule

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Village A portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) on or before ten (10) days after the date on which the first SFR or MFU within the Trilogy portion of the Development is connected to any Communication Service provided by Cox.

Cox will pay Master Developer a percent of revenue, according to the following scale, for its marketing of Cox's products and services. The revenue will be paid on the incremental sales above 75% penetration. The penetration rate will be calculated by dividing active customers by total homes passed. Penetration will be calculated monthly and paid quarterly 90 days after the close of the quarter. This scale applies to Cable Television Service, Telephone Service (excluding long distance), and Internet Access Service. It is exclusive of fees assessed for pay per view movies, long distance, installation fees, equipment fees whether purchased or rented, television guides, taxes, assessments, and license fees.

Penetration	Payout
75% - 79%	15%
80% - 85%	16%

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86% - 90%	17%
90% - 95%	18%
96% - 100%	20%

Marketing Compensation will be paid individually per product achieving 75% penetration. Each product must stand on its own merit in order to qualify for marketing compensation.

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