

When recorded, return to:

Paul Gales, Esq.  
Greenberg Traurig, LLP  
2375 East Camelback Road, Suite 800  
Phoenix, Arizona 85016

Amends 2021-0172847  
Recorded at 3:23 p.m.  
on February 16, 2021

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SECOND AMENDMENT  
TO  
DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND  
INTERGOVERNMENTAL AGREEMENT  
(VISTANCIA NORTH COMMUNITY FACILITIES DISTRICT)

THIS SECOND AMENDMENT, dated as of \_\_\_\_\_ 1, 2023 (hereinafter referred to as this “*Amendment*”), TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT (VISTANCIA NORTH COMMUNITY FACILITIES DISTRICT), dated as of September 1, 2020, as amended by the First Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia North Community Facilities District), effective as of August 10, 2021, by and among the City of Peoria, Arizona, a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona (hereinafter referred to as the “*Municipality*”); Vistancia North Community Facilities District, a community facilities district formed by the Municipality, and duly organized and validly existing, pursuant to the laws of the State of Arizona (hereinafter referred to as the “*District*”); and Vistancia Development LLC, a limited liability company duly incorporated and validly existing pursuant to the laws of the State of Delaware and authorized to do business in the State of Arizona (hereinafter referred to as “*Vistancia Development*”);

W I T N E S S E T H:

WHEREAS, pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (hereinafter referred to as the “*Act*”), and Section 9-500.05, Arizona Revised Statutes, the Municipality, the District, Vistancia Master Holdings, LLC (hereinafter referred to as “*VMH*”) and Vistancia Residential, LLC (hereinafter referred to as “*Vistancia Residential*”) entered into a District Development, Financing Participation and Intergovernmental Agreement (Vistancia North Community Facilities District, dated as of September 1, 2020 (hereinafter referred to as the “*Original Agreement*”), as a “development agreement” to specify, among other things, conditions, terms, restrictions and requirements for “public infrastructure” (as such term is defined in the Act) and the financing of public infrastructure and subsequent reimbursements or repayments over time; and

WHEREAS, with regard to the real property described in Exhibit A hereto (hereinafter referred to as the “*Property*”) which makes up the real property included within the District, some of such matters are specified in the hereinafter defined Agreement, particularly matters relating to the acquisition of certain public infrastructure by the District, the acceptance thereof and the reimbursement or repayment with respect thereto, all pursuant to the Act, such public infrastructure being necessary to develop the Property prior to the time at which the District can itself pay for the construction or acquisition thereof; and

WHEREAS, Vistancia Residential previously owned the Property, and VMH had an interest in the Property as an investor, guarantor and indemnitor; and

WHEREAS, Vistancia Residential conveyed the Property to Vistancia Development; and

WHEREAS, by a First Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia North Community Facilities District), effective as of August 10, 2021 (hereinafter referred to as the “*First Amendment*” and the Original Agreement, as amended by the First Amendment, is hereinafter referred as the

“Agreement”), Vistancia Residential and VMH assigned all of their rights and obligations contained in the Agreement, and Vistancia Development accepted all of the rights and assumed all of the obligations of the Agreement on the part of both Vistancia Residential and VMH to be performed, including to provide substitute security, indemnification obligations and replenishment of the “Expenses Account” in an amount and form not less than described in the Agreement; and

WHEREAS, the Agreement, including as amended by this Amendment, as a “development agreement” is consistent with the “general plan” of the Municipality (as defined in Section 9-461, Arizona Revised Statutes) applicable to the Property on the date the Agreement and on the date this Amendment was and is, respectively, executed;

NOW, THEREFORE, in the joint and mutual exercise of their powers, in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, and subject to the conditions set forth herein, the parties hereto agree that:

Section 1. Exhibit B of the Agreement is replaced with Exhibit B hereto.

Section 2. The provisions of the Agreement are otherwise hereby ratified and confirmed in all respects, in particular the indemnification provided by Article VII thereof being effective in all respects as it relates to this Amendment.

Section 3. This Amendment shall be binding upon and shall inure to the benefit of the parties to this Amendment and their respective legal representatives, successors and assigns; provided, however, that none of the parties hereto shall be entitled to assign its right hereunder or under any document contemplated hereby without the prior written consent of the other parties to this Amendment, which consent shall not be unreasonably withheld.

Section 4. Each party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances

reasonably requested or appropriate to evidence or give effect to the provisions of this Amendment.

Section 5. This Amendment sets forth the entire understanding of the parties as to the matters set forth herein as of the date this Amendment is executed and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Amendment is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 6. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Arizona.

Section 7. The waiver by any party hereto of any right granted to it under this Amendment shall not be deemed to be a waiver of any other right granted in this Amendment nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Amendment.

Section 8. This Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

Section 9. (a) Pursuant to Section 38-511, Arizona Revised Statutes, the Municipality or the District may, within three years after its execution, cancel this Amendment, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Amendment on behalf of the Municipality or the District, as applicable, is, at any time while this Amendment is in effect, an employee or agent of Vistancia Development in any capacity or a consultant to any other party of this Amendment with respect to the subject matter of this Amendment and may recoup any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Amendment on behalf of the Municipality or the District, as applicable, from Vistancia Development arising as the result of this Amendment. Vistancia Development has not

taken and shall not take any action which would cause any person described in the preceding sentence to be or become an employee or agent of Vistancia Development in any capacity or a consultant to any party to this Amendment with respect to the subject matter of this Amendment.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, Vistancia Development shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by Vistancia Development of the foregoing shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the Municipality or the District. The Municipality and the District retain the legal right to randomly inspect the papers and records of Vistancia Development to ensure that it is complying with the foregoing. Vistancia Development shall keep such papers and records open for random inspections during normal business hours by the Municipality or the District. Vistancia Development shall cooperate with the random inspections by the Municipality or the District including granting the District entry rights onto its property to perform such random inspections and waiving its rights to keep such papers and records confidential.

(c) To the extent applicable under Section 35-393 et seq., Arizona Revised Statutes, Vistancia Development hereby certifies that it is not currently engaged in, and for the duration of this Amendment shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Municipality or the District determines that the above certification of Vistancia Development is false or that it has breached such agreement, the Municipality or the District, as applicable, may impose remedies as provided by law.

(d) To the extent applicable under Section 35-394, Arizona Revised Statutes, Vistancia Development hereby certifies it does not currently, and for the duration of this Amendment shall not use: (i) the forced labor of ethnic Uyghurs in the People’s Republic of China, (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s

Republic of China, and (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. The foregoing certification is made to the best knowledge of Vistancia Development without any current independent investigation or without any future independent investigation for the duration of this Amendment. If Vistancia Development becomes aware during the duration of this Amendment that it is not in compliance with such certification, Vistancia Development shall take such actions as provided by law, including providing the required notice to the Municipality and the District. If the Municipality or the District determines that Vistancia Development is not in compliance with the foregoing certification, Vistancia Development shall take remedial action to comply with such certification.

Section 10. (a) If any provision of this Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

(b) No later than ten (10) days after this Amendment is executed and delivered by each of the parties hereto, the District shall record a copy of this Amendment with the County Recorder of Maricopa County, Arizona.

(c) Unless otherwise expressly provided, the agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

[Signature page follows.]

IN WITNESS WHEREOF, the officers of the Municipality and the District have duly affixed their signatures and attestations, and the officers of Vistancia Development their signatures, all as of the day and year first written above.

CITY OF PEORIA, ARIZONA

By.....  
Jason Beck, Mayor

ATTEST:

.....  
Lori Dyckman, City Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the Municipality, who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the Municipality.

.....  
Emily Jurmu, City Attorney

VISTANCIA NORTH COMMUNITY  
FACILITIES DISTRICT

By.....  
Jason Beck, Chairman, District Board

ATTEST:

.....  
Lori Dyckman, District Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the District, who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

.....  
Emily Jurmu, District Counsel

AGREED TO AND ACCEPTED BY:

VISTANCIA DEVELOPMENT LLC,  
a Delaware limited liability company

By: Vistancia Investors LLC,  
a Delaware limited liability company  
Its Manager

By.....  
Name.....  
Title.....

By.....  
Name.....  
Title.....

ATTACHMENTS:

EXHIBIT A -- Legal Description of the Property

EXHIBIT B -- Description of the Infrastructure

[Signature page to Second Amendment to Development Agreement]

STATE OF ARIZONA        )  
  ) ss  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this ..... day of ..... 2023,  
by Jason Beck, as Mayor of the City of Peoria, Arizona, an Arizona municipal corporation.

.....  
Notary Public

My commission expires:

.....

STATE OF ARIZONA        )  
  ) ss  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this ..... day of ..... 2023,  
by Jason Beck, as Chairman of the District Board of Vistancia North Community Facilities  
District, an Arizona community facilities district.

.....  
Notary Public

My commission expires:

.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s)  
relate(s) to the Second Amendment, dated as of \_\_\_\_\_ 1, 2023, to the District Development,  
Financing Participation and Intergovernmental Agreement (Vistancia North Community  
Facilities District), dated as of September 1, 2020, executed by the City of Peoria, Arizona, an  
Arizona municipality, Vistancia North Community Facilities District, an Arizona community  
facilities district, and Vistancia Development LLC, a Delaware limited liability company (the  
“Notarized Document”). The Notarized Document contains a total of ..... pages.



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INCLUDED IN RECORDED VERSION]

## EXHIBIT B

### DESCRIPTION OF THE INFRASTRUCTURE

Jomax Water Treatment Facility Expansion Phase 2B – The project includes expanding the existing treatment plant capacity for the District up to 2.25 MGD. Current the facility has 1.5 MGD of treatment capacity for the District. Process improvements include: adding extended aeration basin 2B, adding additional blowers, adding additional UV lamps, adding a second sludge storage tank, modifying existing pump capacity where needed, and adding miscellaneous site improvements where necessary.

Vistancia Blvd (LS I-1) Lift Station – Regional lift station to convey wastewater from north of the CAP Canal to the gravity sewer in Vistancia Blvd located just south of the CAP Canal. Project to include concrete wet well, submersible pumps, odor control system, discharge piping, electrical service and remote telemetry, standby power generator, and other miscellaneous site improvements.

Water Zone 6/7 Pump Station Modifications – Project to modify and convert the existing Zone 5 pumps and hydropneumatic tank at the existing Zone 5/6 Reservoir and Pump Station Site to serve the City's Pressure Zone 7.

Water Zone 7/8/9 Reservoir and Pump Station (Joint Effort with Saddleback) – Project to design and construct water storage for City pressure zone 7, as well as, booster pump stations and hydropneumatic tanks for pressure zones 8 and 9. This project is considered a joint development effort with Saddleback Heights. The storage component will consist of one 1.0 MG circular concrete reservoir for Vistancia. The pump stations will be housed in a masonry type building (approx. 3,500 sf) with all mechanical equipment (excluding the hydropneumatic tanks); gas-based chlorine recirculation system for the reservoir; electrical power supply equipment; instrumentation and pump controls; radio telemetry; and one standby power generator. A site perimeter wall and landscaping will also be included. Current Westland Zone 7 improvements provide for approx. 1,000 SFU in Zone 7. Zone 7/8 needs to be on-line when 1,000 units are closed in Zone 7 or when homes in Zone 8 are desired. Cost inflation determined assuming project construction start in 4-years (2022).

Water Zone 9 Reservoir (located within Saddleback) – As a replacement for the previously master planned Zone 8/9 Reservoir and Booster Facility in Vistancia, jointly share in the construction of “floating” storage to be developed within Saddleback to serve both pressures zones 8 and 9 in Vistancia. This project is considered a joint development effort with Saddleback Heights. Includes expanding the planned Saddleback pressure zone 9 Reservoir capacity by 0.5 MG using circular pre-stressed concrete reservoir(s) and sharing in ancillary support systems. This is needed for homes planned in Village K (except K10 - K16, K18, and K19). Cost inflation determined assuming project construction start in 10-years (2028).

Water In-line Pressure Zone PRVs – Provide in-line pressure reducing valve station between City pressure zone boundaries (8 and 7) and (9 and 8). One in-line PRV Station will be located within Vistancia Blvd ROW north of the CAP and the other in Village K near the water

distribution system interconnect with Saddleback. Zone 9 to 8 not needed until Saddleback Zone 9 Reservoir is complete. Zone 8 to 7 not needed until Zone 8 BPS (at Zone 7/8/9) is on-line. Zone 8 to 7 cost inflation determined assuming project construction start in 4-years (2022). Zone 9 to 8 cost inflation determined assuming project construction start in 10-years (2028).

Water Line Zone 8 and 9 Connection - This project connects the zone 8 and 9 water reservoir and pumping systems. Consistent with the regional water master plan, this will include approximately 2,500 linear feet of 12" water line. The actual alignment is pending final site planning and coordination between Vistancia and the Saddleback property as development continues to the North.

CAP Water and Wastewater Connection - This improvement consists of a lift station (LS I-15) and other necessary infrastructure approximately on the 137<sup>th</sup> Ave alignment to cross the Central Arizona Project Canal in order to loop water and allow for the flow of wastewater to existing regional infrastructure to the south. These two connection points shall transverse the CAP canal property line connecting Vistancia North to the existing regional infrastructure already in place.

Westland Reservoir - This Water Campus site consists of one 2.5 million gallon ("MG") reservoir, booster pump station and hydropneumatic tanks to serve City pressure zones 5, 6, and 7 within the District, a gas-based chlorine disinfection system for the reservoir; electrical power supply equipment; standby power generator; instrumentation and pump controls, perimeter wall, landscaping, site acquisition, access improvements, and necessary transmission line to connect the storage facility to existing water line adjacent to the site, and other miscellaneous site work. These improvements have been constructed pursuant to a Joint Development Agreement with the City, the Developer and other developers. A portion of the Developer's proportionate share has been paid using proceeds from the existing Vistancia CFD and the balance has been paid directly by the Developer. This later portion will be reimbursed from proceeds of the sale of the Bonds.

Other Public Infrastructure Improvements - Other city public infrastructure required for the subject project that the Municipality, the District and Vistancia Residential mutually agree to allow to be part of the subject CFD.