

RESOLUTION NO. 2023-68

A RESOLUTION OF THE COUNCIL OF THE CITY OF PEORIA, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT (MYSTIC AT LAKE PLEASANT HEIGHTS COMMUNITY FACILITIES DISTRICT)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PEORIA, ARIZONA, as follows:

1. Findings.

a. On June 16, 2020, there was presented to the governing body of the City of Peoria, Arizona, an incorporated municipality of the State of Arizona (hereinafter called the “Municipality”), a Petition for Adoption of a Resolution Ordering and Declaring Formation of Mystic at Lake Pleasant Heights Community Facilities District, dated June 16, 2020 (hereinafter referred to as the “Petition”) signed by the entities which, on the date thereof, were the owners of all real property as shown on the assessment roll for State and County taxes for Pima County, Arizona (hereinafter called the “Petitioners”), in Mystic at Lake Pleasant Heights Community Facilities District (hereinafter called the “District”), the formation of which, among other things, was prayed for by the Petitioners in the Petition, pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (hereinafter referred to as the “Act”).

b. Pursuant to the Act and Section 9-500.05, Arizona Revised Statutes, in connection with the formation of the District, the Municipality, the District, Vistancia Master Holdings, LLC, a limited liability company duly incorporated and validly existing pursuant to the laws of the State of Arizona and authorized to do business in the State of Arizona, which has an interest in certain property in the District and is an investor, guarantor and indemnitor but is not a developer (hereinafter referred to as “VMH”), and Vistancia Residential, LLC, a limited liability company duly incorporated and validly existing pursuant to the laws of the State of Arizona and authorized to do business in the State of Arizona, which has an interest in certain property in the District and is an investor, developer, guarantor and indemnitor (hereinafter referred to as “Vistancia Residential”), entered into a District Development, Financing Participation and Intergovernmental Agreement (Mystic at Lake Pleasant Heights Community Facilities District), dated as of September 1, 2020 (hereinafter referred to as the “Development Agreement”), to specify, among other things, conditions, terms, restrictions and requirements for “public infrastructure” (as defined in the Act); the financing of public infrastructure and subsequent reimbursements or repayments over time and, with respect to the advance of moneys for public infrastructure and the repayment of such advances and to obtain credit enhancement for, and process disbursement and investment of proceeds of, general obligation bonds of the District to be thereafter issued.

c. Pursuant to the Act and Title 11, Chapter 7, Article 3, Arizona Revised Statutes, in connection with the formation of the District, the District and the Municipality

entered into an “intergovernmental agreement” with one another for joint or cooperative action for services and to jointly exercise any powers common to them and for the purposes of the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure.

d. The Petition was granted, and, by Resolution No. 2020-54, adopted on June 16, 2020 (the “2020 Resolution”), by the Council of the Municipality, the District was formed over the property described in such Resolution (hereinafter referred to as the “Property”) as a district pursuant to the terms and provisions of, and with the powers and authority established by, the Act, subject to the restrictions and modifications set forth in the Petition, and as the Petition was signed by the owners of all the property in the District and there were not within fifty (50) days preceding the first anticipated election of the District, residents on such property, requirements of posting, publication, mailing, notices, hearing and election otherwise required by the Act with respect to formation of the District were found to be unnecessary.

e. The Development Agreement (in the form prior to the hereinafter defined First Amendment) was approved by the 2020 Resolution.

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

g. Vistancia Residential conveyed the Property to Vistancia Development LLC (hereinafter referred to as “Vistancia Development”).

h. By a First Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia North Community Facilities District), effective as of August 10, 2021 (referred to herein as the “First Amendment”), Vistancia Residential and VMH assigned all of their rights and obligations contained in the Development Agreement, and Vistancia Development accepted all of the rights and assumed all of the obligations of the Development 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 Development Agreement.

i. The Council of the Municipality has determined to enter into a Second Amendment to the Development Agreement (the “Development Agreement Amendment”), to provide for certain additional amendments to the Development Agreement relating to supplementing the description of the Infrastructure (as such term is defined in the Development Agreement) described in Exhibit B to the Development Agreement.

j. There have been placed on file with the City Clerk of the Municipality and presented to the Council of the Municipality, in connection with the amendment of the Development Agreement, the proposed form of the Development Agreement Amendment.

2. Authorization and Approval of Development Agreement Amendment. The Development Agreement Amendment is hereby approved in substantially the form submitted herewith, with such changes, additions, deletions, insertions and omissions, if any, as the Mayor of the Municipality, with the advice of the Manager of the Municipality and the City Attorney of the Municipality, shall authorize, the execution and delivery of the Development Agreement

Amendment to be conclusive evidence of the propriety of such document and the authority of the persons or persons executing the same. The Mayor of the Municipality, with the advice of the Manager of the Municipality and the City Attorney of the Municipality, is hereby authorized and directed to execute, and the City Clerk of the Municipality to attest and deliver, the Development Agreement Amendment on behalf of the Municipality.

3. No Liability of or for the Municipality. Neither the Municipality nor the State of Arizona or any political subdivision of either (other than the District) shall be directly, indirectly or morally liable or obligated for the costs of the public infrastructure contemplated by the Development Agreement nor for the payment or repayment of any indebtedness, liability, cost, expense or obligation of the District, and neither the credit nor the taxing power of the Municipality, the State of Arizona or any political subdivision of either (other than the District) shall be pledged therefor.

4. Effect of Resolution.

a. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any remaining provisions of this Resolution.

b. All resolutions or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency.

c. The 2020 Resolution is hereby ratified and confirmed in all respects from its date to the date hereof.

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PASSED by the Mayor and Council of the City of Peoria, Arizona, this 16th day of  
May 2023.

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Mayor, City of Peoria, Arizona

ATTEST:

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City Clerk, City of Peoria, Arizona

APPROVED AS TO FORM:

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City Attorney, City of Peoria, Arizona

REVIEWED BY:

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City Manager, City of Peoria, Arizona