

RESOLUTION NO. 2024-27

A RESOLUTION OF THE COUNCIL OF THE CITY OF PEORIA, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO AMENDED AND RESTATED DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT (VISTANCIA COMMUNITY FACILITIES DISTRICT)

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

1. Findings.

a. On September 18, 2002, 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 Declaring Formation of Vistancia Community Facilities District, signed by the entity which, on the date thereof, was the owner of all real property (hereinafter referred to as the "Property") as shown on the assessment roll for State and county taxes for Maricopa County, Arizona, in Vistancia Community Facilities District (herein after called the "District"), the formation of which, among other things, was prayed for by such petitioner in such petition, pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (hereinafter referred to as the "Act").

b. By Resolution 02-210, adopted on October 15, 2002 (the "2002 Resolution"), by the Mayor and Council of the Municipality, the District was formed as a district pursuant to the terms and provisions of, and with the powers and authority established by, the Act.

c. Pursuant to the Act and Section 9-500.05, Arizona Revised Statutes, in connection with the formation of the District, the Municipality, the District and certain entities which at various times have had an interest in real property within the boundaries of the District entered into a District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated as of October 1, 2002, as amended by a First Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated as of April 1, 2005 (hereinafter referred to as the "First Amendment"), a Second Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated as of December 1, 2006 (hereinafter referred to as the "Second Amendment"), and a Third Amendment to District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated as of September 1, 2015 (as so amended by such amendment and the First Amendment and the Second Amendment, hereinafter referred to as the "Original Development Agreement"), and 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.

d. Thereafter, the Mayor and Council of the Municipality determined to enter into an Amended and Restated District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated as of September 1, 2020 (hereinafter referred to as the “Restated Development Agreement”), by and among 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 (hereinafter referred to as “Vistancia Residential”), to amend and restate the Original Development Agreement for the purposes described therein.

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

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

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

h. The Council of the Municipality has determined to enter into a Second Amendment to the Restated Development Agreement (the “Development Agreement Amendment”), to provide for certain additional amendments to the Restated Development Agreement to modify the definition of “Letter of Credit (Indemnity)” in the Restated Development Agreement.

i. There has 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 Restated 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 Restated 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 2002 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 7th day of
May 2024.

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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