

When Recorded Return to:
City of Peoria
City Clerk's Office
8401 W. Monroe Street
Peoria, Arizona 85345

**FOURTH AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR
VISTANCIA IN PEORIA, ARIZONA**

This Fourth Amendment to the Amended and Restated Development Agreement for Vistancia in Peoria, Arizona ("**Fourth Amendment**") is entered into as of the ____ day of _____, 2025 ("**Effective Date**"), by and between (i) the **CITY OF PEORIA, ARIZONA**, an Arizona municipal corporation (the "**City**"), (ii) **VISTANCIA DEVELOPMENT LLC**, a Delaware limited liability company ("**Vistancia Development**"), and (iii) **VISTANCIA INVESTMENTS LLC**, a Delaware limited liability company (the "**VI Owner**"). The City and Vistancia Development may be referred to herein individually as a "**Party**" or collectively as the "**Parties.**"

RECITALS

A. WHEREAS, A.R.S. §9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City or outside its incorporated area.

B. WHEREAS, the City and the predecessor-in-interest to Vistancia Development previously entered into that certain Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated May 1, 2012 (the "**Original Agreement**"), recorded on May 9, 2012 in Instrument No. 20120395094 of the official records of Maricopa County, Arizona (the "**Official Records**"), as amended by that certain First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated March 5, 2014, recorded on March 5, 2014 in Instrument No. 20140142708 of the Official Records, which First Amendment was amended by that certain Amended and Restated First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated September 14, 2015, recorded on September 30, 2015 in Instrument No. 20150707630 of the Official Records (the "**First Amendment**"); and further amended by that certain Assignment of and Second Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated June 24, 2021, recorded on July 26, 2021 in Instrument No. 2021806346 of the Official Records (the "**Second Amendment**"); and Third Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated August __, 2025, recorded on August __, 2025 in Instrument No. _____ of the Official Records (the "**Third Amendment**"), and together with the Original Agreement, the First Amendment and the Second Amendment being hereinafter collectively referred to as the "**Development Agreement**"), which is hereby further amended by this Fourth Amendment and is otherwise hereby incorporated in its entirety; and

C. WHEREAS, On November 22, 2024, Vistancia Development conveyed to AMKOR TECHNOLOGY ARIZONA, INC., an Arizona corporation ("**Amkor**") fifty (50) acres of real property within Parcels D-15 and D-16 of the Vistancia Commercial Core (the "**50 Acres**") and sold approximately six and 31/100 (6.31) acres of adjacent real property within Parcels D-15 and

D-16 of the Vistancia Commercial Core (the “**6 Acres**”, and collectively with the 50 Acres, “**Parcel D-15/16**”). The legal description of the 6 Acres is described on Exhibit “A” attached hereto. The conveyance of Parcel D-15/16 by Vistancia Development to Amkor is hereafter referred to as the “**Amkor Conveyance**”. As part of the Amkor Conveyance, Amkor, Vistancia Development, the City and First American Title Insurance Company entered into a Joint Development Agreement (the “**JDA**”), which among other items provide for the design and construction of, and payment for, certain infrastructure improvements described in the JDA.

D. WHEREAS, the Amkor Conveyance fully satisfied Vistancia Development’s obligation, pursuant to the Development Agreement, to convey fifty (50) acres of real property to a “targeted end user” (and the conveyance to Amkor fully satisfied the Type of Use Requirement (as defined in Section 2(a) of the First Amendment), and the Quality of Investment Requirement (as defined in Section 2(b) of the First Amendment).

E. WHEREAS, Subject to the express terms of this Fourth Amendment, the City and Vistancia Development now desire that: (i) Amkor convey to the City, and the City accept Parcel D-15/16, and (ii) Amkor, the City, Vistancia Development and other parties terminate the JDA.

F. WHEREAS, Section 27 of the Original Agreement provides that the Development Agreement may be amended with the mutual written consent of the Parties. The Parties desire to amend the Development Agreement on the terms and conditions set forth in this Fourth Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements set forth herein, and for other good and valuable consideration, the receipt, sufficiency, and validity of which are hereby acknowledged, the Parties state, confirm and agree as follows:

AGREEMENT

1. Incorporation of Recitals; Capitalized Terms. The foregoing Recitals are agreed to be true and correct and are incorporated herein by this reference. Capitalized terms not defined herein shall have the meaning set forth in the Development Agreement.

2. Failure to Acquire Parcel D-15/16. In the event that, on or before December 31, 2025, the City fails to acquire Parcel D-15/16 and the parties to the JDA fail to terminate the JDA, this Fourth Amendment shall be of no further force or effect.

3. Marketing of Parcel D-15/16; Selection of Purchaser(s). Promptly after the City acquires Parcel D-15/16, the City shall market Parcel D-15/16 for sale to one or more Targeted End Users. “**Targeted End User**” shall have the meaning set forth in Section 2 of the First Amendment. Any sale by the City must satisfy the criteria described in Section 3(a) and (b) below. Vistancia Development shall have the right to participate in the marketing of Parcel D-15/16, and the City shall consult Vistancia Development in the process to select prospective purchasers of all or any portion of Parcel D-15/16. Vistancia Development shall have the right to participate in the selection process of all or any portion of Parcel D-15/16. Provided the proposed purchaser(s) of Parcel D-15/16 would satisfy the Type of Use Requirement specified in Section 2(a)(i) of the First Amendment and otherwise satisfies the conditions set forth in Section 3(a) and (b) below, and if

the proposed purchaser or purchasers are otherwise acceptable to the City, then the City may select the purchaser.

a. No Sale by City for Less Than Fair Market Value. The purchase and sale agreement (“PSA”) used for the sale of the Property to the prospective purchaser (“**Prospective Purchaser**”) shall include a contingency in favor of the City, and Vistancia Development (as an express third party beneficiary of the contingency set forth in the PSA) that the Fair Market Value of any consideration received by the City for Parcel D-15/16 (or portion thereof) shall be equal to or exceed the Fair Market Value of the property sold, determined as of the date the City executes the PSA with the Prospective Purchaser. The process for determining “**Fair Market Value**” is set forth in Exhibit “B” attached hereto. In the event the consideration received by the City is not cash consideration, then the Fair Market Value of the Consideration shall be determined in the same manner (as set forth in Exhibit “B”).

b. No Residential Use. Without the express written approval of Vistancia Development (which consent may be withheld in Vistancia Development’s sole discretion), no portion of Parcel D-15/16 may have any residential use, such use being currently prohibited in that certain Supplemental Declaration (Vistancia Parcel D-15 and D-16), recorded in the official records of Maricopa County, Arizona at No. 2024-0626532.

4. Unsold Portion of Parcel D-15/16 Five Years after City Approval of Parcel D-15/16 Acquisition; Exception for 6 Acres. In the event that the City remains as the owner of more than twenty-one (21) acres of Parcel D-15/16 on the fifth (5th) anniversary of the City Council approval of the City’s acquisition of Parcel D-15/16 from Amkor (the “**City Acquisition Approval**”), then Vistancia Development may, in its sole discretion, either:

a. Continue to work with the City to identify a purchaser for Parcel D-15/16 that is consistent with Vistancia Development’s development strategy and is satisfactory to the City in the City’s reasonable discretion, whether or not to a Targeted End User or other prospective purchaser (provided that any proposed sale must satisfy the criteria in Section 3(a) and (b)); or

b. Elect to purchase the remaining portion of Parcel D-15/16 from the City for the Fair Market Value of such portion of Parcel D-15/16, determined as described in Section 3(a) and Exhibit “B”, less any real estate broker fees or commissions avoided by the City based on the sale to Vistancia Development. Vistancia Development may make the election to purchase the remaining portion of Parcel D-15/16 at any time after the fifth (5th) anniversary of the City Acquisition Approval (“**VDV’s Purchase Election**”). Upon VDV’s Purchase Election, Vistancia Development shall have one hundred eighty (180) days to negotiate a purchase agreement, procure and review any due diligence materials, review any title commitment, and acquire the remaining portion of Parcel D-15/16 through an escrow established with First American Title Insurance Company. Vistancia Development’s option to purchase Parcel D–15/16 as provided in this Section 3(b) shall be for the benefit of Vistancia Development and any successors or assigns, and shall expire upon the date that Vistancia Development (or successors or assigns) no longer owns any property within Vistancia.

c. Notwithstanding anything to the contrary, at any time prior to the fifth (5th) anniversary of the City Acquisition Approval, Vistancia Development shall have the option to purchase the 6 Acres for a purchase price of \$15.00 per square foot multiplied by 274,935 square feet (\$4,124,025); provided that Vistancia Development’s option to purchase the 6 Acres shall be

of no effect at any time that the City is a party to a PSA for the sale of the 6 Acres, procured in the manner and on the terms set forth in Section 3 above; provided however that if the City executes a letter of intent or memorandum of understanding for the sale of the 6 Acres, the City shall provide notice of the letter of intent or memorandum of understanding to Vistancia Development, and if Vistancia Development does not notify the City in writing of its intent to purchase the 6 Acres within thirty (30) days of said notice, Vistancia Development's option to purchase the 6 Acres shall be of no effect with regard to the transaction described in the letter of intent or memorandum of understanding. In the event the transaction described in the letter of intent or memorandum of understanding terminates, or if the purchase price of the 6 Acres decreases or if the prospective purchaser fails to close six (6) months after the date of the letter of intent or memorandum of understanding, then prior to any sale, the City shall again follow the procedures this Section. In the event Vistancia Development elects to exercise the option to purchase the 6 Acres, Vistancia Development shall have one hundred eighty (180) days following the written exercise of the option to negotiate a purchase agreement, procure and review any due diligence materials, review any title commitment and acquire the 6 Acres through an escrow established with First American Title Insurance Company.

d. In the event Vistancia Development exercises the right to purchase all or part of Parcel D-15/16 pursuant to Section 3(b) or (c), and if the City has paid the City's allocable share of any Segment (defined below) abutting the portion of Parcel D-15/16 acquired by Vistancia Development, then Vistancia Development shall reimburse the City for the prorated portion acquired (based on lineal footage of the portion of Parcel D-15/16 acquired divided by the total linear footage of the segment).

5. Design and Construction of, and Payment for, Streets Surrounding Parcel D-15/16. Immediately following the conveyance of Parcel D-15/16 to the City, the City and Vistancia Development will own certain real property, the development of which is dependent on the design and construction of one or more of the roads described in Exhibit "C" attached hereto, and of certain utilities contained within the roads. The first of the City or Vistancia Development that is prepared to commence construction on one or more of the road segments described in Exhibit "C" (each a "**Segment**" and collectively the "**Segments**") shall engage one or more contractors to construct the applicable Segment(s). Construction of such Segments shall comply with A.R.S Title 34 and the City of Peoria City Code. Each Segment shall be the subject of a separate reimbursement agreement with the City, in the form attached hereto as Exhibit "D" (each a "**Reimbursement Agreement**" and collectively the "**Reimbursement Agreements**"). The City and Vistancia Development shall equally share the costs associated with the design and construction of each Segment, as further provided in the Reimbursement Agreements. Each Reimbursement Agreement shall provide that the City and Vistancia Development pay their respective allocable share of the costs associated with the Segment (as described in the applicable Reimbursement Agreement) on a monthly basis. Each Reimbursement Agreement shall provide the non-constructing party with a self-help right to step in and complete the applicable Segment in the event that the applicable Segment is not completed by the date set forth in the Reimbursement Agreement. Vistancia Development may assign the rights under any Reimbursement Agreement to a purchaser of one or more parcels within the Vistancia Commercial Core. Such purchasers shall be designated as third party beneficiaries under the applicable Reimbursement Agreement.

6. Increase in Permitted Residential Units. When requested by Vistancia Development, the City agrees to cooperate with any zoning request including support for additional units above the current 12,000 unit cap. All such requests must comply with applicable City laws, including,

where applicable and without limitation, approval by the City Council, which is not guaranteed. To expedite any requests related to the increase in maximum number of residential units, the City agrees to process concurrently any of the Entitlement Actions submitted by Vistancia Development or its proposed purchasers.

7. General Provisions.

A. Compliance with Laws. Notwithstanding any language that appears to the contrary, all reimbursements made under this Agreement, and all projects associated with such reimbursements, shall comply with all applicable federal, state, and local laws, ordinances, regulations, and requirements. The City shall have no obligation to issue any reimbursements unless and until the reimbursed project is in full compliance with all applicable legal requirements.

B. Fourth Amendment Controls. In the event of any inconsistencies between this Fourth Amendment and the Development Agreement, the terms of this Fourth Amendment shall govern and control. Except as set forth in this Fourth Amendment, all other terms and conditions of the Development Agreement are hereby ratified and affirmed by each of the Parties, and shall continue in full force and effect.

C. Due Authorization; Assurances. The Parties each represent and warrant that (a) the individual signing this Fourth Amendment on such Party's behalf has the legal authority to do so, (b), each Party has received all necessary consents and approvals to enter into this Fourth Amendment, and (c) this Fourth Amendment will run with the land and will bind, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. The Parties will each execute and deliver such other instruments and perform such other acts, as may be reasonably necessary, from time to time, to effectuate this Fourth Amendment.

D. Counterparts Signature. This Fourth Amendment may be executed by each of the Parties hereto in separate counterparts with the same effect as if all Parties hereto executed the same counterpart. Each such counterpart shall be deemed an original and all of such counterparts together shall constitute one and the same instrument.

E. Governing Law. This Fourth Amendment shall be construed and interpreted in accordance with the Development Agreement according to the laws of the State of Arizona.

F. Recordation. The City will record this Fourth Amendment in the Official Records within ten (10) days after the last Party signs.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURES FOLLOW ON NEXT PAGES]**

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment on the day and year first above written.

CITY:

CITY OF PEORIA,
an Arizona municipal corporation

By: _____
Jason Beck, Mayor

ATTEST:

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF 6 ACRES

All that certain lot, tract, or parcel of land, situated in a portion of Section 25, Township 5 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more completely described as follows, to-wit:

COMMENCING at a found GLO monument on pipe for the Southeast corner of said Section 25, from which a found GLO monument on 2" pipe for the South Quarter corner of said Section 25 bears North 89 deg. 47 min. 14 sec. West (Basis of Bearings) – 2,565.10 feet, said point also being the most southerly Southeast corner of Parcel D6 as shown on the Master Plat of Vistancia Village D South recorded in Book 1498 of Maps, Page 14, of Maricopa County Records (MCR);

THENCE North 89 deg. 47 min. 14 sec. West along the South line of the Southeast Quarter of said Section 25, same being the South line of said Parcel D6, a distance of 999.27 feet;

THENCE North 00 deg. 12 min. 46 sec. East departing said South lines, a distance of 2,144.55 feet to the **TRUE POINT OF BEGINNING**;

THENCE North 58 deg. 41 min. 53 sec. West, a distance of 748.11 feet;

THENCE North 31 deg. 18 min. 07 sec. East, a distance of 331.97 feet;

THENCE North 76 deg. 18 min. 07 sec. East, a distance of 42.43 feet;

THENCE South 58 deg. 41 min. 53 sec. East, a distance of 394.70 feet to a Point of Curvature of a circular curve to the left, having a radius of 1,070.00 feet, a central angle of 08 deg. 27 min. 30 sec., and being subtended by a chord which bears South 62 deg. 55 min. 38 sec. East - 157.82 feet;

THENCE in a southeasterly direction along said curve to the left, a distance of 157.96 feet;

THENCE South 67 deg. 09 min. 23 sec. East, a distance of 167.86 feet;

THENCE South 31 deg. 18 min. 07 sec. West, a distance of 398.30 feet to the **POINT OF BEGINNING**, containing 274,934 square feet or 6.312 acres of land, more or less.

EXHIBIT B

PROCESS FOR DETERMINING FAIR MARKET VALUE

1. The fair market value of Parcel D-15/16 or portion thereof being sold shall be determined by a Qualified Appraiser acceptable to the City and Vistancia Development. For these purposes, a “**Qualified Appraiser**” means a person who is experienced in appraising commercial land within master-planned communities. If the City and Vistancia Development are unable to agree on a single Qualified Appraiser within ten (10) days of the Valuation Date (defined below), then within twenty (20) days after the Valuation Date the City and Vistancia Development each shall appoint a Qualified Appraiser. If the fair market value of Parcel D-15/16 or portion thereof being sold as determined by the lower of the two appraisals is equal to or greater than ninety percent (90%) of the fair market value as determined by the higher appraisal, then the fair market value of Parcel D-15/16 or portion thereof being sold shall be deemed to be the average of the two appraisals. If the fair market value of Parcel D-15/16 or portion thereof being sold as determined by the lower appraisal is less than ninety percent (90%) of the fair market value as determined by the higher appraisal, then the two Qualified Appraisers shall, within five (5) business days after the last of the two appraisal reports is delivered to the parties, agree on a third Qualified Appraiser. The fair market value of Parcel D-15/16 or portion thereof being sold shall be deemed to be equal to the average of the two appraisals with the least dollar variation between them; provided, however, that the fair market value shall be no higher than the higher of the two original appraisals nor lower than the lower of the two original appraisals; and provided, further, that if one appraisal is the average of the other two appraisals, then the fair market value shall be deemed to be the average of all three appraisals. Each Qualified Appraiser shall be instructed to provide an appraisal report within thirty (30) days of his or her appointment and all costs of appraisal shall be borne by the City.

2. The Valuation Date for purposes of Section 3(a) shall mean the date of execution of the PSA by the City and the Prospective Purchaser.

EXHIBIT C

DEPICTION AND DESCRIPTION OF SEGMENTS

Location	Approximate Distance
<p>Peakview Road Phase 1 From Espial Ave, east Approximately 884 Feet</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023, which consists of; 12” water line, and dry utilities as depicted below. Surface improvements consist of concrete, paving, signage and striping, streetlights, and landscape.</p>	884 lineal feet
<p>Peakview Road Phase 2 From eastern end of Peakview Road Phase 1, east to Desert Cactus Lane.</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023, which consists of; 12” water line, and dry utilities as depicted below. Surface improvements consist of concrete, paving, signage and striping, streetlights, and landscape.</p>	858 lineal feet
<p>Espial Ave Phase 4 From Peakview Road South to Westward Skies Drive</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023, which consists of; 12” water line, 12” sewer line, and dry utilities as depicted in below. Surface improvements consist of concrete, paving, signage and striping, streetlights, and landscape.</p>	1410 lineal feet
<p>Westward Skies Dr Ph 2 From Espial Avenue, East to Desert Cactus Lane</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023, which consists of; 16” water line, existing 27” sewer line, and dry utilities, as depicted below. Surface improvements consist of concrete, paving, signage and striping, streetlights, and landscape.</p>	1171 lineal feet

Location	Approximate Distance
<p>Desert Cactus Lane Phase 3 Peakview Road, south to Westward Skies Drive</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023, which consists of; 16" water line, and dry utilities as depicted below. Surface improvements consist of concrete, paving, signage and striping, streetlights, and landscape.</p>	2112 lineal feet

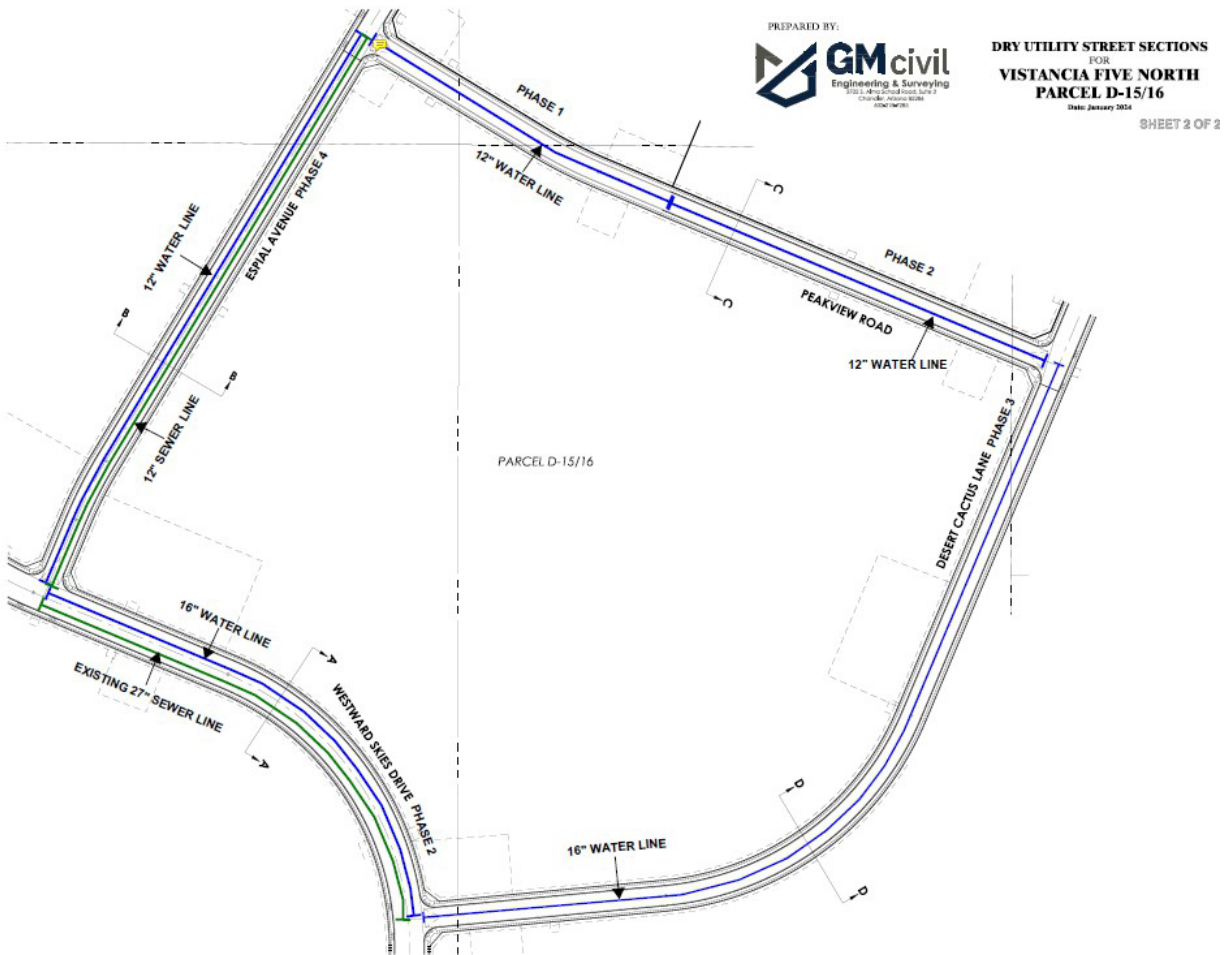


EXHIBIT D

FORM OF REIMBURSEMENT AGREEMENT

REIMBURSEMENT AGREEMENT

(_____, from _____ to _____) [NTD – THIS WOULD BE THE DESCRIPTION OF THE ROAD SEGMENT FOR EACH OF THE 5 SEGMENTS]

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is dated as of the _____ day of August, 2025, and is entered into by and between **Vistancia Development LLC**, a Delaware limited liability company (“VDV”), and **THE CITY OF PEORIA** (“City”).

RECITALS

A. The City and VDV are parties to that certain Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated May 1, 2012 (the “**Original Agreement**”), recorded on May 9, 2012 in Instrument No. 20120395094 of the official records of Maricopa County, Arizona (the “**Official Records**”), as amended by that certain First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated March 5, 2014, recorded on March 5, 2014 in Instrument No. 20140142708 of the Official Records, which First Amendment was amended by that certain Amended and Restated First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated September 14, 2015, recorded on September 30, 2015 in Instrument No. 20150707630 of the Official Records (the “**First Amendment**”); and further amended by that certain Assignment of and Second Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated June 24, 2021, recorded on July 26, 2021 in Instrument No. 2021806346 of the Official Records (the “**Second Amendment**”); Third Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated August __, 2025, recorded on August __, 2025 in Instrument No. _____ of the Official Records (the “**Third Amendment**”); and Fourth Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated August __, 2025 (the “**Fourth Amendment**”, and together with the Original Agreement, the First Amendment, the Second Amendment and Third Amendment, being hereinafter collectively referred to as the “**Development Agreement**”). Among other things, the Fourth Amendment provided that the City and VDV equally share the costs associated with the design and construction of __ (the “**Road Segment**”), together with the certain utilities contained within the Road Segment (the “**Utilities**”, and together with the Road Segment, the “**Project**”). The Project is illustrated on **Exhibit A**.

B. This Agreement shall be a “Reimbursement Agreement” as described in the Fourth Amendment, pursuant to which each of VDV and the City is responsible for fifty percent (50%) of the costs of the Project (on the terms set forth below).

C. The parties acknowledge that constructing the Project will impose a financial burden on VDV. To compensate for such burden, the City desires to reimburse VDV as provided in this Agreement.

D. VDV has agreed to work with the City to complete the Project in an effort to eliminate the duplication of construction efforts, minimize costs, expedite completion of construction, and reduce adverse impacts to the public.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, VDV and City hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. **Definitions: Incorporation of Exhibits.**

- a. **“Project Costs”** shall mean the hard and soft costs incurred in connection with the design, engineering, permitting, construction, installation and warranty of the Project, including, but not limited to, costs of labor, materials suppliers, consultant fees and costs, blue printing services, construction staking, demolition, soil or compaction, any processing, plan check or permit fees, legal and engineering services required to obtain a permit for and complete the Project, costs of insurance required by this Agreement, any corrections, changes or additions to work required by the City or other governmental authorities or necessitated by site conditions, state, county and City sales taxes imposed in connection with construction of the Project, other contractor’s fees, any contingency funds, and funds for repair during any warranty period, all as listed on the estimated budget (the **“Estimated Budget”**).
- b. **“Third-party Beneficiary”** shall mean a purchaser of one or more parcels within the Vistancia Commercial Core to whom VDV has assigned its rights under this Agreement or to enforce this Agreement, either on an exclusive or non-exclusive basis.
- c. The following documents are referred to in this Agreement and are attached hereto and made a part of this Agreement by this reference:

Exhibit Description

A Project Depiction

3. **VDV Obligations.** In addition to the express obligations of VDV set forth elsewhere in this Agreement:

- a. When the City or VDV is prepared to commence design and construction of the Project, the party prepared to commence shall provide written notice to the other. Once VDV receives the notice from the City or provides the notice to the City, then VDV shall proceed to coordinate, administer, direct and oversee the design, plan approval, permitting and construction of the Project, and when reasonably possible, VDV shall provide the Estimated Budget (defined below)

to the City. Any engagement of engineers, consultants and other professionals engaged to design, permit and construct the City Improvements, shall be in accordance with the provisions of Title 34 of the A.R.S. and City requirements for construction projects as specified in the Peoria City Code, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time. Following receipt of the Approved Plans (as defined below) for the Project, VDV will engage contractors and subcontractors in accordance with the provisions of Title 34 of the A.R.S. and City requirements for construction projects as specified in the Peoria City Code, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time. VDV shall cause to be prepared and submitted to the City, proposed plans reflecting the design of the Project (the “**Plans**”). VDV and the City shall use diligent, good faith efforts and shall meet together to attempt to resolve any objections to the Plans. Once finalized, the final Plans shall be referred to as the “**Final Plans**”. The Final Plans, after having received approval from the City, shall hereinafter be referred to as the “**Approved Plans.**” Nothing in this Agreement shall be interpreted as imposing any additional obligation on or promise by City to approve any permit, plan, or any other application whatsoever submitted to City pursuant to this Agreement. VDV shall cause the Project to be installed and constructed in substantial accordance with the Approved Plans and in a good and workmanlike manner and in compliance with applicable requirements of all Governmental Authorities and free of all liens for labor or materials. The foregoing shall not constitute a warranty by VDV, in addition to any warranty required by MAG, applicable regulations, standards and policies, that survives Final Completion of the Project.

- b. Any contractor engaged by VDV shall abide by the standards, general notes, and requirements identified in Peoria Engineering Standards Manual, the City of Peoria Supplement to Maricopa Association of Governments Uniform Standard Details (latest edition), Maricopa Association of Governments Standard Specifications and Standards (latest edition), and City standards and policies. The contractor shall comply with all federal, state, and municipal requirements, including but not limited to the requirements of Arizona Revised Statutes Title 34 if applicable to this Project.
- c. Any contractor engaged by VDV shall comply with all necessary City of Peoria bonding and insurance requirements.
- d. VDV shall obtain, or cause its contractor to obtain all required permits from the City and Maricopa County, subject to any reimbursement rights contained as described in this Agreement, and provided however, all such fees imposed by the City shall be waived by the City.
- e. VDV shall use commercially reasonable efforts to cause the completion of the Project within twelve (12) months after obtaining a permit (the “**Estimated**

Completion Date”), subject to force majeure delays. If VDV fails to cause the completion of the Project on or before the Estimated Completion Date, then the City or any Third-party Beneficiary may deliver written notice to VDV. VDV shall have thirty (30) days after VDV’s receipt of such notice to complete the Project (the “**Cure Period**”); provided, however, if completion of the Project cannot reasonably be achieved within thirty (30) days, as mutually determined by the Parties, the Cure Period shall be deemed extended for a reasonable period of time not to exceed a total of sixty (60) days so long as VDV is proceeding in good faith and with due diligence to cause such completion. If VDV does not, prior to expiration of the applicable Cure Period, complete the Project, then the City or any Third-party Beneficiary shall be entitled to elect to complete the Project. From and after the date of any such election, the party electing to complete the Project shall have the rights of (and obligations) of VDV for purposes of this Agreement (other than the obligation of VDV to pay VDV’s allocable share of the Project, which shall remain with VDV) and shall have all of the rights of, and shall be responsible for causing the full and timely performance of the duties and obligations of, VDV accruing from and after the date of the election. If VDV does not, prior to expiration of the applicable Cure Period, complete the Project, then in addition to the City’s rights, any Third-party Beneficiary may elect to enforce this Agreement at the expense of the City and VDV. Any expenses and costs directly related to the completion of the Project by a Third-party Beneficiary will be subject to review and approval as provided in this Agreement. VDV shall cooperate to effect a smooth and timely transition of any party stepping in to complete the construction of the Project as contemplated in this Section.

4. **City Obligations.** In addition to the express obligations of the City set forth elsewhere in this Agreement:

- a. The City shall review the Project work for compliance with City standards and accept the Project if all standards are met and the work is completed to the City’s reasonable satisfaction. This includes, but is not limited to, walk through inspections of existing sidewalk, curb and gutter before, during, and after construction of the Project.
- b. Upon Project completion, inspection and acceptance of the construction, ownership of the Project and ancillary components thereof will become the property of the City and thereafter the City will be responsible for any maintenance or repairs thereof.

5. **Costs; Draw Requests; Payment.** VDV and the City each agree to pay fifty percent (50%) of the Project Costs in accordance with the terms of this Agreement.

- a. If either party requests that any part of the Project be over-sized to accommodate a more substantial use of a particular owner’s property, then once such modifications to the Approved Plans are approved by the City, then VDV shall construct the additional improvements, and the owner of the property

requiring such modifications shall solely pay the additional costs of design and construction. VDV and the City acknowledge that conditions and circumstances may hereafter be found to exist that necessitate a change in the Estimated Budget and, as a result, VDV does not guarantee that the Project can be constructed and completed for the Project Costs amount set forth in the Estimated Budget. As a result, from time to time, VDV may determine that the Estimated Budget needs to be revised, in which event VDV shall deliver the revised Estimated Budget to the City, together with appropriate supporting documentation. In addition, VDV and the City acknowledge that the Estimated Budget may be prepared on the basis of final bids, preliminary bids, and/or estimates of the Project Costs, as available on the date the Estimated Budget was prepared. As and when final bids have been selected for the Project, VDV shall update and revise the Estimated Budget to conform to the final bid numbers or other applicable information, and shall deliver to the City a copy of the updated Estimated Budget, together with appropriate supporting documentation. The Estimated Budget, supportive documentation, and any revision and/or update to the Estimated Budget shall be subject to the City's reasonable review and approval.

- b. VDV shall be entitled to submit draw requests that comply with the requirements set forth in this Section (each, a “**Draw Request**”) to the City on or before the 5th business day of each calendar month to pay all Project Costs incurred through the 30th calendar day of the prior calendar month. All Draw Requests shall be subject to the City's reasonable review and approval. Draw Requests may be submitted no more than once per month, and shall be subject to the following additional requirements, terms and conditions:
 - i. To be complete, each Draw Request must contain the following items of information:
 - (a) It must set forth the total amount to be paid pursuant to the current Draw Request, as well as the total amount paid pursuant to prior Draw Requests, together with copies of all invoices and other supporting information evidencing the amounts to be paid;
 - (b) It must allocate the amounts in Subsection (a) above equally between the City and VDV, unless otherwise provided in this Section 5;
 - (c) It must allocate the total amount to be paid pursuant to the current Draw Request among the Estimated Budget line items to be paid;
 - (d) It must contain VDV's estimate of the percentage of completion of the Project Improvements and each component thereof;
 - (e) It must contain VDV's estimate of the cost to complete the Project Improvements and each component thereof;
 - (f) It must contain VDV's statement that, to its knowledge, the

Draw Request is true, correct and complete in all material respects; and

- (g) It must be accompanied by: (i) statutory conditional lien waivers and releases from all of the contractors, service providers and other suppliers, contractors, subcontractors and other lower tier providers of labor, materials, equipment, services and other work (excluding subcontractors and materials suppliers who have not filed a preliminary twenty (20) day lien notice) that are to be paid from the current Draw Request (collectively “**Lien Claimants**”); and (ii) to the extent not previously provided, statutory unconditional waivers and releases from such Lien Claimants in the full amount shown on all conditional waivers and releases previously submitted in connection with prior Draw Requests for which payment has been made hereunder. In the event the City receives a preliminary 20-day lien notice relating to the Project Improvements, the City shall deliver a copy of such a preliminary 20-day lien notice to VDV within ten (10) days following receipt thereof.

- c. The City shall pay to VDV, in cash or other immediately available funds, the amount due from the City as set forth in the Draw Request and VDV shall pay, in cash or other immediately available funds, VDV’s portion directly to the payees described in the Draw Request. All such payments shall be due on or before twenty (20) days after the date on which the Draw Request was delivered to the City, unless within that period the City objects to the Draw Request, in which case the City and VDV shall use commercially reasonable efforts to, and shall work in good faith to, resolve any of the City objections.

6. **Intentionally Omitted.**

7. **Indemnification.** VDV shall require each subcontractor to contractually agree to indemnify, defend, and hold harmless both VDV and the City, and each of their respective directors, officers, employees, and agents, for, from and against all claims, demands, suits, and costs including, but not limited to, costs of defense, reasonable attorneys’ fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person (including, but not limited to, employees of the City), or to any property, to which the City, its directors, officers, employees, or agents may be put or subject to by reason of (i) any act or omission by such subcontractor or any of its directors, officers, employees, agents, contractors, or invitees relating to actions in connection with the Project by any person or entity, including but not limited to such subcontractor and/or its employees, agents, contractors, invitees or successors in interest; or (ii) any failure on the part of VDV, or any of its directors, officers, employees, contractors, agents or successors in interest to fulfill its obligations hereunder, except to the extent that any loss, damage, expense, and liability is attributable to the grossly negligent or willful acts or failure to act or misconduct of the City, its directors, officers, employees, and agents. Prior to commencement of any work of the Project, VDV will cause its subcontractors to deliver to the City an amended Certificate of Insurance or a separate

Certificate of Insurance naming the City as an additional insured with equivalent limits and terms to that certain Certificate of Insurance issued to VDV.

8. **Conflict of Interest.** The City shall have the right to terminate this Agreement for conflict of interest pursuant to A.R.S. § 38-511.

9. **Amendment or Cancellation of the Agreement.** This Agreement shall automatically terminate when all required work under the Agreement has been completed and the City has made all payments to VDV. However, Section 7 of the Agreement shall survive revocation and/or termination of this Agreement.

GENERAL PROVISIONS

10. **Assignment.** VDV may: (i) assign this Agreement to any party acquiring the remainder of the Vistancia Commercial Core, with the City's prior written consent which will not be unreasonably withheld, delayed or conditioned; and (ii) VDV may identify additional parties who have purchased land from VDV, where the development of the purchased property is dependent on the completion of the Project, and such additional parties shall be intended Third-party Beneficiaries of this Agreement with the rights to enforce the Agreement in the event VDV and/or the City fail to perform. The City shall not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or in part, without VDV's consent, which VDV may grant or withhold in VDV's sole discretion.

11. **Attorneys' Fees and Costs.** If the City or VDV defaults in the timely performance of its obligations under this Agreement, the Party not in default shall be entitled to recover court costs and reasonable attorneys' fees, as determined by a court, in any suit or proceeding to enforce its rights under this Agreement. The foregoing shall not in any way limit or restrict any right or remedy at law or equity, which would otherwise be available to such Party in default.

12. **Authority.** VDV represents and warrants to the City: (1) that it is duly formed and validly existing within the State of Delaware (qualified to do business in Arizona); and (2) that the individual executing this Agreement on behalf of VDV is authorized and empowered to bind the VDV. The City represents and warrants to VDV: (1) that it is a duly formed municipal corporation; and (2) that the individuals executing this Agreement on behalf of the City are authorized and empowered to bind the City.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

14. **Default Remedies.** If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting Party will be entitled to all remedies available at both law and in equity, including but not limited to specific performance.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to this issue and will not be changed or added to except in the manner provided herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, regarding the subject of this Agreement, are superseded by this Agreement.

16. **Governing Law.** This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Jurisdiction and venue for any action concerning this Agreement shall be solely in Maricopa County, Arizona.

17. **Severability.** If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

18. **Service of Notice.** All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) or delivered personally or by overnight courier, to the respective address below or to such other address as may be furnished in writing by either Party to the other pursuant to this Section 18; or (ii) transmitted by email to the respective email address below or to such other email address as may be furnished in writing by either Party to the other pursuant to this Section 18, and the appropriate confirmation is received.

To VDV and:
and Contract Administrator: Vistancia Development LLC
c/o Land Resources, LLC.
7010 East Acoma Drive, Suite 204
Scottsdale, AZ 85254
Attention: Mark Hammons and Chris Reed
Telephone: (480) 305-2173
E-Mail: mhammons@Land-Resources.com
and creed@Land-Resources.com

with a copy to: Vistancia Development LLC
100 Bayview Circle #2000
Newport Beach, CA 92660
Attention: Richard S. Whiteley
Telephone: (949) 851-2121
Email: rwhiteley@ihpinc.com

with an additional copy to: IHP Capital Partners
100 Bayview Circle #2000
Newport Beach, CA 92660
Attention: Legal Department
Telephone: (949) 851-2121
Email: legalnotices@ihpinc.com

with an additional copy to: Berens Blonstein PLC
7033 E. Greenway Parkway, Suite 210
Scottsdale, AZ 85254
Attention: Marc D. Blonstein
Telephone: (480) 624-2703
Email: mblonstein@berensblonstein.com

To City: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attention: Henry Darwin, City Manager
Telephone: (623) 773-7114
E-mail: henry.darwin@peoriaaz.gov

With a copy to: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attention: Emily Jurmu, City Attorney
Telephone: (623) 773-7330
E-mail: emily.jurmu@peoriaaz.gov

All notices and demands shall be deemed effective upon delivery, if delivered personally or by overnight courier, or if transmitted by email, or upon receipt of certified mail.

20 **Waiver.** No waiver by either Party of any breach of any of the covenants or conditions of this Agreement which are to be performed by the other Party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

21. **Relationship.** This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between VDV and the City.

22. **Arizona Law Provisions.**

- a. To the extent applicable, the Parties certify that they are not currently engaged in, and agree for the duration of this Agreement that they will not engage in, a boycott, as that term is defined in A.R.S. § 35-393, of Israel.

- b. To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by a Party to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

- c. To the extent applicable under A.R.S. § 35-394, each Party hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People's Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (c) 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. If a Party becomes aware during the duration of this Agreement that it is not in compliance with such certification, such Party shall take such actions as provided by applicable law, including providing the required notice to City. If City determines that a Party is not in compliance with the foregoing certification, such failure to comply with the certifications in this Section shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by City if not cured within any applicable cure period.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY:

CITY OF PEORIA,
an Arizona municipal corporation

By: _____
Jason Beck, Mayor

ATTEST:

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

VDV:

VISTANCIA DEVELOPMENT LLC,
a Delaware limited liability company

By: Vistancia Investors LLC,
a Delaware limited liability company

Its: Manager

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT A – PROJECT DEPICTION