

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

cc: 14C  
Amend No. \_\_\_\_\_

Date prepared: January 5, 2010

Council Meeting Date: January 19, 2010

**TO:** Carl Swenson, City Manager

**FROM:** Katie Gregory, Budget Coordinator

**SUBJECT:** Assignment of the Vistancia Development and Annexation Agreement.

**RECOMMENDATION:** That the Mayor and Council consent to the assignment and transfer of certain rights and obligations of the Vistancia Development and Annexation Agreement to Vistancia Land Holdings, L.L.C.

**SUMMARY:**

In August, Vistancia, L.L.C. entered into a joint venture transaction with an affiliate of the Stratford Company of Dallas, Texas. This transaction resulted in an infusion of approximately \$75 million in new capital to the Vistancia property, which was used to satisfy and release the development loan held by GMAC. As a result, the Vistancia property is now owned free and clear of all third party debt.

Part of the transaction was the creation of a new master entity; Vistancia Land Holdings, L.L.C. which is owned 90.09% by the Stratford Affiliate (SLF III-Vistancia, L.L.C.) and 9.91% by Vistancia L.L.C. Under the terms of the joint venture, day to day management of the property will continue to be administered by the Shea/Sunbelt team that has performed that function since the original acquisition of the property.

Under the terms of the existing agreement, the owner may transfer or assign the rights and obligations, in whole or in part, upon consent of the City Council. The structure of the assignment the transfer and assignment of all future development obligations, requirements and reimbursements to the new master entity Vistancia Land Holdings, L.L.C. and releases Vistancia L.L.C from these obligations, requirements and reimbursements.

Staff has reviewed the proposed assignment and believes that the new master entity, Vistancia Land Holdings, L.L.C. has the financial and technical ability to fully perform the obligations of both agreements. Therefore, staff recommends that the Mayor and

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# 141001B LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

Council consent to the proposed transfer and assignment of rights and obligations of the Vistancia Development and Annexation.

**FISCAL NOTE:** (if applicable)

This transfer will not have any negative fiscal impact to the City.

**ATTACHMENT:**

1. Assignment of the Development and Annexation Agreement

When recorded, return to:

Lesa J. Storey, Esq.  
Greenberg Traurig, LLP  
2375 E. Camelback Road  
Suite 700  
Phoenix, Arizona 85016

**ASSIGNMENT OF  
DEVELOPMENT AND ANNEXATION AGREEMENT  
(VISTANCIA -- FKA WHITE PEAK RANCH AND LAKELAND VILLAGE)**

This Assignment of Development and Annexation Agreement ("**Assignment**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by **VISTANCIA, LLC**, a Delaware limited liability company ("**Assignor**") to and for the benefit of **VISTANCIA LAND HOLDINGS, LLC**, a Delaware limited liability company ("**Assignee**"), with the consent of the **CITY OF PEORIA, ARIZONA**, a municipal corporation ("**City**").

**RECITALS**

**A.** Assignor (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), as Owner, and the City have entered into that certain Development and Annexation Agreement White Peak Ranch and Lakeland Village, recorded on October 24, 2001, in Instrument No. 2001-0986718, Official Records of Maricopa County, Arizona, as amended by a First Amendment thereto recorded on April 22, 2005, in Instrument No. 2005-0524713, Official Records of Maricopa County, Arizona (collectively, the "**Development Agreement**"), relating to certain Property described therein that comprises the master-planned community known as "Vistancia."

**B.** Defined terms appear in this Assignment with the first letter of each word in the term capitalized. Defined terms appearing in this Assignment, but not otherwise defined herein, shall have the meanings attributed to such terms in the Development Agreement.

**C.** On August 31, 2009 (the "**Effective Date**"), Assignor conveyed to Assignee or its affiliates title to all Property within Vistancia that was then owned by Assignor. Such conveyance was made pursuant to that certain Agreement for Purchase and Sale of Membership Interest dated August 28, 2009 (the "**Purchase Agreement**").

**D.** Assignor and Assignee now desire that all of Assignor's rights as Owner under the Development Agreement be assigned to Assignee, that Assignee assume all of Assignor's obligations as Owner arising under the Development Agreement from and after the Effective Date, and that Assignor be released from its obligations as Owner arising under the Development Agreement from and after the Effective Date, and the City desires to consent to

**LCON14601B**

the foregoing, all subject to and in accordance with the terms and conditions hereinafter provided.

## A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals A through D are incorporated herein and made a part hereof.

2. **Assignment.** Assignor hereby assigns and transfers to Assignee and, subject to the representations, warranties, covenants, obligations and liabilities of Assignor under the Purchase Agreement, and the other terms and provisions in the Purchase Agreement, Assignee hereby accepts, all of its rights as Owner or otherwise under the Development Agreement.

3. **Assumption.** Subject to the representations, warranties, covenants, obligations and liabilities of Assignor under the Purchase Agreement, and the other terms and provisions in the Purchase Agreement, Assignee represents, warrants and covenants to Assignor that Assignee hereby assumes and shall perform all of its obligations as Owner under and pursuant to the Development Agreement that arise from and after the Effective Date.

4. **Assignor Indemnity.** Assignor shall indemnify, defend and hold Assignee harmless for, from and against any and all losses, damages, liabilities, actions, proceedings, demands, claims, costs and expenses (including reasonable attorneys' fees) suffered or incurred by Assignee by reason of the failure of Assignor to have performed and complied with the obligations, liabilities, duties, covenants, conditions and restrictions contained in the Development Agreement that arise out of or relate to events occurring prior to the Effective Date.

5. **Assignee Indemnity.** Subject to the representations, warranties, covenants, obligations and liabilities of Assignor under the Purchase Agreement, and the other terms and provisions in the Purchase Agreement, Assignee shall indemnify, defend and hold Assignor harmless for, from and against any and all losses, damages, liabilities, actions, proceedings, demands, claims, costs and expenses (including reasonable attorneys' fees) suffered or incurred by Assignor by reason of the failure of Assignee to perform and comply with the obligations, liabilities, duties, covenants, conditions and restrictions contained in the Development Agreement that arise out of or relate to events occurring on or after the Effective Date.

6. **Release.** Assignor is hereby released from all obligations as Owner under and pursuant to the Development Agreement, to the extent that such obligations have been assumed by Assignee pursuant to this Assignment.

7. **City Consent.** The City hereby consents to this Assignment including, but not limited to, the release of Assignor as set forth in **Section 6** above.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date and year first above set forth.

**"ASSIGNOR"**

**VISTANCIA, LLC**, a Delaware limited liability company

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

By: Sunbelt PP Limited Partnership, an Arizona limited partnership, its Managing Member

By: AGS LLC, an Arizona limited liability company, its General Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

**"ASSIGNEE"**

**VISTANCIA LAND HOLDINGS, LLC**, a Delaware limited liability company

By: VISTANCIA, LLC, a Delaware limited liability company, its Managing Member

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

By: Sunbelt PP Limited Partnership, an Arizona limited partnership, its Managing Member

By: AGS LLC, an Arizona limited liability company, its General Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

"CITY"

CITY OF PEORIA, ARIZONA, a municipal corporation

By: \_\_\_\_\_  
Bob Barrett, Mayor

\_\_\_\_\_  
Mary Jo Kief, City Clerk

Approved as to form:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

SUBSCRIBED AND SWORN to before me this \_\_\_ day of \_\_\_\_\_, 2009, by  
Bob Barrett, Mayor of the City of Peoria, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA            )  
  )ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of Shea Homes Southwest, Inc., an Arizona corporation, Member of **Vistancia, LLC**, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA            )  
  )ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of Shea Homes Southwest, Inc., an Arizona corporation, Member of **Vistancia, LLC**, a Delaware limited liability company, Managing Member of **Vistancia Land Holdings, LLC**, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA            )  
  )ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, the \_\_\_\_\_ of AGS LLC, an Arizona limited liability company, General Partner of Sunbelt PP Limited Partnership, an Arizona limited partnership, Managing Member of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, Managing Member of Vistancia, LLC, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA            )  
  )ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, the \_\_\_\_\_ of AGS LLC, an Arizona limited liability company, General Partner of Sunbelt PP Limited Partnership, an Arizona limited partnership, Managing Member of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, Managing Member of Vistancia, LLC, a Delaware limited liability company, Managing Member of **Vistancia Land Holdings, LLC**, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires: