

**VISTANCIA COMMUNITY FACILITIES DISTRICT
PEORIA, ARIZONA
DISTRICT COMMUNICATION**

DC: 2C
Amend No. _____

Date Prepared: January, 5, 2010

District Meeting Date: January 19, 2010

TO: Carl Swenson, District Manager
FROM: Katie Gregory, Budget Coordinator

SUBJECT: Assignment of the Vistancia Community Facilities District Development, Financing Participation and Intergovernmental Agreement.

RECOMMENDATION: That the Board consent to the assignment and transfer of certain rights and obligations of the Vistancia Community Facilities District, Financing Participation and Intergovernmental Agreement to Vistancia Land Holdings, L.L.C. and authorize Brent Mattingly, Finance Director, to execute the assignment and all other necessary documents for this purpose on behalf of the Board.

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 does not propose releasing Vistancia L.L.C. from any of the obligations required under the CFD, but rather adds Vistancia Land Holdings, L.L.C. as an additional obligated party under the CFD.

Staff has reviewed the proposed assignments 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 Board

DISTRICT 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# 10702A LIC. # _____
Action Date: _____

consent to the proposed transfer and assignment of rights and obligations of the Community Facilities District Development, Financing Participation and Intergovernmental Agreement and authorize Brent Mattingly, Finance Director, to execute the assignment and all other necessary documents for this purpose on behalf of the Board.

FISCAL NOTE: (if applicable)

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

ATTACHMENT:

1. Assignment of the District Development, Financial Participation and Intergovernmental Agreement

When recorded, return to:

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

**ASSIGNMENT OF
DISTRICT DEVELOPMENT, FINANCING PARTICIPATION
AND INTERGOVERNMENTAL AGREEMENT
(VISTANCIA COMMUNITY FACILITIES DISTRICT)**

This Assignment of District Development, Financing Participation and Intergovernmental Agreement ("**Assignment**") is made as of the ____ day of _____, 2009, by **VISTANCIA, LLC**, a limited liability company duly formed and validly existing pursuant to the laws of the State of Delaware ("**Assignor**") to and for the benefit of **VISTANCIA LAND HOLDINGS, LLC**, a limited liability company duly formed and validly existing pursuant to the laws of the State of Delaware ("**Assignee**"), with the consent of the **CITY OF PEORIA, ARIZONA**, a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona ("**Municipality**"), **VISTANCIA 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 ("**District**"), Sunbelt Pleasant Point Investors, L.L.C., a limited liability company duly formed and validly existing pursuant to the laws of the State of Arizona ("**Sunbelt**"), and J.F. Shea Co., Inc., a corporation duly formed and validly existing pursuant to the laws of the State of Nevada ("**Shea**").

RECITALS

A. Assignor (formerly known as Shea Sunbelt Pleasant Point, LLC, a Delaware limited liability company), the Municipality, the District, Sunbelt, and Shea have entered into that certain District Development, Financing Participation and Intergovernmental Agreement (Vistancia Community Facilities District), dated October 1, 2002, and recorded October 23, 2002 as Instrument No. 2002-1103744, Official Records of Maricopa County, Arizona, as amended by a First Amendment thereto dated April 1, 2005, and recorded April 27, 2005 as Instrument No. 2005-548718, Official Records of Maricopa County, Arizona, and by a Second Amendment thereto dated December 1, 2006, and recorded December 28, 2006 as Instrument No. 2006-1693267, Official Records of Maricopa County, Arizona (collectively, the "**CFD Development Agreement**"), relating to certain Property described therein that comprises the master-planned community known as "Vistancia."

LCON10702A

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 CFD Development Agreement.

C. In connection with the CFD Development Agreement and bonds previously issued thereunder, Assignor has entered into certain existing agreements and obligations as described in Schedule 1 attached hereto and incorporated herein by reference (the "Existing Agreements and Obligations").

D. 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").

E. Assignor and Assignee now desire that all of Assignor's rights under the CFD Development Agreement and the Existing Agreements and Obligations be assigned to Assignee, and that Assignee assume all of Assignor's obligations arising under the CFD Development Agreement and the Existing Agreements and Obligations from and after the Effective Date (it being understood and agreed that Assignor will not be released from any of its obligations arising under the CFD Development Agreement or the Existing Agreements and Obligations), and the other parties to this Assignment desire to consent to 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 E 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 Assignor's rights under the CFD Development Agreement and the Existing Agreements and Obligations.

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 Assignor's obligations under and pursuant to the CFD Development Agreement and the Existing Agreements and Obligations 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 CFD Development Agreement and/or the Existing Agreements and Obligations 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 CFD Development Agreement and/or the Existing Agreements and Obligations that arise out of or relate to events occurring on or after the Effective Date.

6. **No Release.** Notwithstanding any contrary provision hereof, it is specifically agreed and acknowledged that Assignor is not hereby released from any of its obligations under or pursuant to the CFD Development Agreement and/or the Existing Agreements and Obligations. To the extent that such obligations have been assumed by Assignee pursuant to this Assignment, the parties agree that Assignor and Assignee shall be jointly and severally liable for the payment and performance thereof.

7. **Consent of Other Parties.** The Municipality, the District, Sunbelt, and Shea hereby consent to this Assignment. The parties shall give prompt notice of this Assignment to Wells Fargo Bank Arizona, N.A., in its capacity as Trustee and Depository under the Existing Agreements and Obligations (it being the understanding of the parties that the consent of Wells Fargo Bank Arizona, N.A. to this Assignment is not required under the terms of the Existing Agreements and Obligations).

[NO FURTHER TEXT ON THIS PAGE]

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: _____

"MUNICIPALITY"

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

"DISTRICT"

VISTANCIA COMMUNITY FACILITIES DISTRICT

By: _____
Brent Mattingly, District Chief Financial Officer

Mary Jo Kief, District Clerk

Approved as to form:

Stephen M. Kemp, District Attorney

"SHEA"

J.F. SHEA CO., INC., a Nevada corporation

By: _____
Its: _____

By: _____
Its: _____

"SUNBELT"

SUNBELT PLEASANT POINT INVESTORS, L.L.C., an Arizona limited liability company

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: _____

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)

SUBSCRIBED AND SWORN to before me this ___ day of _____, 2009, by
Brent Mattingly, Chief Financial Officer of **Vistancia Community Facilities District**.

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:

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____ and _____, the _____ and _____, respectively, of J.F. Shea Co., Inc., a Nevada 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 _____, 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, on behalf of the company.

Notary Public

My Commission Expires:

SCHEDULE 1

Description of Existing Agreements and Obligations

General Obligation Bonds – Series 2002

- A. Series 2002 Standby Contribution Agreement, dated December 1, 2002, between Vistancia Community Facilities District, Wells Fargo Bank Arizona, N.A., as Trustee, Shea Sunbelt Pleasant Point LLC, Sunbelt Pleasant Point Investors, L.L.C., and J. F. Shea Co., Inc.
- B. Series 2002 Depository Agreement, dated December 1, 2002, between Wells Fargo Bank Arizona, N.A., as Depository, and Vistancia Community Facilities District

General Obligation Bonds – Series 2005

- C. Series 2005 Standby Contribution Agreement, dated April 1, 2005, between Vistancia Community Facilities District, Wells Fargo Bank, N.A., as Trustee, Vistancia LLC, Sunbelt Pleasant Point Investors, L.L.C., and J. F. Shea Co., Inc
- D. Series 2005 Depository Agreement, dated April 1, 2005, between Wells Fargo Bank, N.A., as Depository, and Vistancia Community Facilities District

General Obligation Bonds – Series 2006

- E. Series 2006 Standby Contribution Agreement, dated December 1, 2006, between Vistancia Community Facilities District, Wells Fargo Bank, N.A., as Trustee, Vistancia LLC, Sunbelt Pleasant Point Investors, L.L.C., and Shea Homes Limited Partnership
- F. Series 2006 Depository Agreement, dated December 1, 2006, between Wells Fargo Bank, N.A., as Depository, and Vistancia Community Facilities District