

**REVISED
CIVANO DEVELOPMENT AGREEMENT**

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EXHIBITS

- Exhibit “1” Recitals
- Exhibit “2” Civano Property Legal Description and Depiction
- Exhibit “3” Civano Existing Zoning Map
- Exhibit “4” “Principles and Conceptual Land Uses to be included within the Specific Plan”
- Exhibit “5” Civano Master Plan
- Exhibit “6” Neighborhood One Legal Description and Depiction
- Exhibit “7” Revised Civano IMPACT System Standards
- Exhibit “8” Revised Memorandum of Understanding
- Exhibit “9” State Land Patent No. 5352533-01 and State Land Patent Conditions
- Exhibit “10” Traffic Engineering for Neo-Traditional Neighborhood Design, dated February 1994
- Exhibit “11” Amended Indemnity Agreement

**REVISED
CIVANO DEVELOPMENT AGREEMENT**

THIS REVISED CIVANO DEVELOPMENT AGREEMENT (the “**Revised Development Agreement**”) is entered into by the CITY OF TUCSON, an Arizona municipal corporation (the “**City**”), THE COMMUNITY OF CIVANO, LLC, an Arizona limited liability company (“**The Community of Civano**”), Case Enterprises Development Corporation, a Connecticut corporation (“**Case Enterprises**”) and **Pulte Home Corporation**, a Michigan corporation (“**Pulte**”).

I N T R O D U C T I O N

1. This Revised Development Agreement fully amends and restates the Original Development Agreement, the Addendum, Amendment No. 1, Amendment No. 2, and the Clarification (as defined herein). Except as provided in Section 3.2.2 below, if there is any conflict between this Revised Development Agreement and any prior agreement or amendment, this Revised Development Agreement shall be controlling. The Recitals that support this Revised Development Agreement provide a detailed explanation of the factual background of the Original Development Agreement (as subsequently amended and clarified), this Revised Development Agreement and the current status of the development of the real property affected by both agreements and are attached here to as Exhibit “1”.

A G R E E M E N T

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

1. Definitions.

1.1. “1991 Rezoning” means the terms and conditions of City rezoning Case No. C9-91-14, as adopted by the Mayor and Council in City Ordinance No. 7697, dated October 7, 1991, as amended by the Civano Neighborhood 1 Planned Area Development by City Ordinance No. 8970, dated October 20, 1997, as revised October 12, 1998 and as further amended by the adoption of City Ordinance No. 8971 and Exhibit A, dated October 20, 1997.

1.2. “Addendum” means an addendum to Amendment No. 1 (as defined herein) as authorized by Resolution No. 17681, adopted on June 23, 1997, and recorded at Docket 10592, Page 633 of the Pima County Records.

1.3. “Amendment No. 1” means the first amendment to the Development Agreement as authorized by Resolution 17680, adopted on June 23, 1997, and recorded at Docket 10592, Page 594 of the Pima County Records.

1.4. “Amendment No. 2” means the second amendment to the Development Agreement as authorized by Resolution No. 17836, adopted on October 20, 1997, and recorded at Docket 10656, Page 444 of the Pima County Records.

1.5. “ASLD” means the Arizona State Land Department.

1.6. “Case Enterprises” means Case Enterprises Development Corporation, a Connecticut corporation.

1.7. “Civano,” the “Civano Project” and the “Project” mean the development of the Civano Project in accordance with this Revised Development Agreement.

1.8. “Civano IMPACT System,” “Civano IMPACT System” or “IMPACT System” means the minimum standards used to define and administer resource conservation and other project goals for the Civano Project as adopted by the Mayor and Council on October 2, 1995.

1.9. “Civano Master Block Plat” or “Master Block Plat” means the block plat for Neighborhood One (as defined herein) authorized by Resolution No. 17834, adopted on October 20, 1997.

1.10. “Civano Neighborhood 1 Planned Area Development” or “Neighborhood 1 PAD” means the original Civano Neighborhood 1 Specific Plan adopted by City Ordinance No. 8970, dated October 20, 1997, as revised on October 12, 1998, as subsequently retitled.

1.11. “Civano Property” or “Property” means the real property legally described and depicted in **Exhibit “2”** attached hereto. The Property may include any additional land that may be included as subject to this Revised Development Agreement or subsequent agreements with the written consent of the parties.

1.12. “Clarification” means a clarification to the Development Agreement (as defined herein) and Amendment No. 1 as authorized by Resolution No. 17758, adopted on August 4, 1997, and recorded at Docket 10607, Page 2595 of the Pima County Records.

1.13. “Commercial Master Plan” means a plan to be prepared by one or more of the Developers and adopted by the Mayor and Council either as a specific plan or as a Planned Area Development which will demonstrate how the commercial areas will be developed in accordance with the Civano Master Plan.

1.14. “Developer” or “Developers” means The Community of Civano, LLC, Case Enterprises, Pulte and their successors and assigns.

1.15. “Development Agreement” means collectively the Original Development Agreement, Amendment No. 1, the Addendum, the Clarification and Amendment No. 2 and this Revised Development Agreement, all as defined herein.

1.16. “Effective Date” means November 19, 1996.

1.17. “Existing Zoning” means the current zoning of the Civano Property as depicted on **Exhibit “3”** attached hereto.

1.18. “Infrastructure Improvements” means infrastructure improvements including but not limited to, (i) local neighborhood or subdivision improvements, such as streets, sidewalks, street lighting, water lines, sewer lines, and drainage facilities; and (ii) both on-site and off-site infrastructure intended to serve Civano as a whole and by extension the entire

Houghton Road corridor, including streets, alleys, sidewalks, street lighting, drainage facilities, water lines, sewer lines, and landscaping located in public rights-of-way, and the relocation of power lines (if necessary), to be financed in part by the City, by the Developer and by municipal improvement district funding where available.

1.19. “Land Uses Memorandum” means a memorandum entitled “Principles and Conceptual Land Uses to be included within the Specific Plan,” dated May 22, 1996, attached as Exhibit 6 to the Original Development Agreement and attached hereto as **Exhibit “4”**. The purpose of the Land Uses Memorandum was to provide general planning guidance subject to future revision consistent with the adoption of additional PAD zones for future neighborhoods outside of Neighborhood One, as appropriate.

1.20. “Master Developer” means the Developer who is responsible under this Revised Development Agreement to facilitate cooperation among the Developers in the master planning of Civano including documenting the compliance with the Civano Master Plan and the performance targets stated therein, the Revised IMPACT System and the Revised Memorandum of Understanding. The Master Developer is also responsible for the periodic monitoring and reporting required by the Revised IMPACT System and Revised Memorandum of Understanding. Pulte is the Master Developer.

1.21. “Master Plan,” “Civano Master Plan” or “Civano Development Plan” means the original master plan for Civano adopted as a condition of rezoning and attached as Exhibit A to Ordinance 7697 and attached hereto as **Exhibit “5,”** and any subsequent amendments to that plan that shall be approved by the State of Arizona and by the City at the time when each such plan is in effect.

1.22. “Memorandum of Understanding” or “MOU” means the document executed by the Developer and the City dated June 26, 1998, that originally implemented the principles of energy efficiency and conservation that underlie the Civano IMPACT System.

1.23. “Neighborhood 1” means that portion of the Civano Property legally described and depicted as attached hereto in **Exhibit “6”** which constitutes the initial area of residential and non-residential development of the Civano Project.

1.24. “Original Civano Property” means an approximately 818-acre parcel of state trust land, located east of Houghton Road and southwest of the Pantano Wash.

1.25. “Original Development Agreement” means that agreement dated July 1, 1996, and entered into by the City and private developers, which have included or presently include the Trust for Sustainable Development [Arizona], Inc., an Arizona corporation; Investors for Sustainable Development [Civano], LLC, an Arizona limited liability company; Case Enterprises Development Corporation, a Connecticut corporation and The Community of Civano, L.L.C., an Arizona limited liability company, and as authorized by Resolution No. 17345 adopted on July 1, 1996, and recorded at Docket 10333, Page 1109 of the Pima County Records. The effective date of the Development Agreement was November 19, 1996.

1.26. “Project Manager” means a City employee designated by the City Manager to coordinate the City’s review of the Developer’s Master Plan and subsequent amendments,

private covenants and subsequent amendments, PAD applications, block plats and related engineering studies, subdivision plats, improvement plans, building plans and building permits as further described in Sections 3.2.3 and 5.1 herein.

1.27. “Pulte” means Pulte Home Corporation, a Michigan corporation, or its designee, which is a Developer and the Master Developer.

1.28. “Revised Development Agreement” or “Revised Civano Development Agreement” means this Revised Development Agreement that amends and restates the Original Development Agreement, the Addendum, Amendment No. 1, Amendment No. 2 and the Clarification as defined herein. If there is any conflict between this Revised Development Agreement and the other documents listed above, this Revised Development Agreement shall be controlling.

1.29. “Revised Civano IMPACT System,” “Revised Civano IMPACT System” or “Revised IMPACT System” means that document that amends and revises the Civano IMPACT System, amended as adopted by the Mayor and Council dated _____, 2003, attached hereto as **Exhibit “7”**.

1.30. “Revised Memorandum of Understanding” or “Revised MOU” means that document that amends and revises the Memorandum of Understanding, executed by the Developer and the City Manager, dated _____, 2003, attached hereto as **Exhibit “8”**. The Revised MOU may be further modified and amended upon the agreement of the City, as represented by the City Manager, and the Developer.

1.31. “State Land Patent” means State Land Patent No. 5352533-01 executed on November 19, 1996, transferring title in the Property to the private parties. The State Land Patent included certain “State Land Patent Conditions” that the Developer of the Property must satisfy. The State Land Patent and the State Land Patent Conditions are attached hereto as **Exhibit “9”**.

1.32. “Southwestern Residential Development” means the residential development of approximately fifty (50) acres in the southwestern area of Neighborhood 2 in the vicinity of Bilby Road and Houghton Road which has been approved by the Mayor and Council on December 8, 2003, as a change of condition to the 1991 Rezoning that amends the existing Master Plan in case Civano/Pulte – Bilby Road, C9-91-14.

2. Civano Energy Conservation and Sustainability Goals.

2.1. Implementation of IMPACT System Standards.

2.1.1. Establishment of Performance Standards. The Developer acknowledges that the Revised Civano Impact Standards as implemented in the Revised Memorandum of Understanding and the Civano Master Plan are the minimum standards for purposes of reporting on the implementation of energy and resource measures required by the 1991 Rezoning.

2.1.2 Periodic Assessment of Performance. The Revised Civano IMPACT System contemplates the monitoring and periodic review to determine the extent to which development continues to meet those standards. The Developer has previously provided reports on Civano's progress. The Master Developer shall continue to provide periodic monitoring reports and assessments of performance under the Revised MOU as part of the future development and construction of the balance of the Civano Project through the completion of seventy-five percent (75%) of the residential development. The Master Developer shall also provide a final assessment upon the completion of ninety-five percent (95%) of the construction of residential development. The Developers shall cooperate with the Master Developer in preparing and providing information for the periodic monitoring reports.

2.1.3 Modification of the IMPACT System Standards and the MOU. As development in Civano proceeds toward completion, it will be necessary to re-evaluate and, as appropriate, revise the IMPACT System and the MOU from time to time based upon the monitoring reports and development experience that reflect the then-current technical and economic feasibility of the Civano Project. Any Developer or the City may request revisions to the IMPACT System, subject to approval by the Mayor and Council. Likewise, at the request of any Developer or the City, the parties shall use their best efforts to prepare revisions to the MOU, subject to execution by the City Manager and the Master Developer. Copies of the Revised IMPACT System and Revised MOU are attached hereto as **Exhibits "7" and "8"** respectively.

3. Rights and Responsibilities of the Parties.

3.1. Developer's Rights and Responsibilities. The Developer has the following rights and responsibilities.

3.1.1. Master Planning. The development of the entire Civano Property has been and shall be master planned as a cohesive development to implement the goals set forth in the Civano Master Plan and the Civano IMPACT System. While the development of Civano has been in substantial conformance with the terms and conditions of the 1991 Rezoning; the Civano Master Plan; the Civano Master Block Plat; and any amendments thereto, the parties acknowledge that the approval of the Neighborhood 1 Planned Area Development has modified the approved Civano Master Plan.

3.1.1.1. Amended Master Plan. Prior to the approval of any plat for the remainder of Neighborhoods 2 and 3, not including the Southwestern Residential Development, an amended master plan shall be prepared by the Master Developer and approved by the City demonstrating the integration of Neighborhoods 2 and 3 with Neighborhood 1 and commercial areas, conformance with the Impact Standards and conformance with the goals of the Civano Master Plan and the master planning for Neighborhoods 2 and 3. The amendment shall further integrate the changes that have been approved with Neighborhood 1 and the Southwest Residential Development into the amended master plan.

3.1.1.2. If either Case or The Community of Civano, or their successors, wishes to proceed with the development of the commercial area in the vicinity of Houghton and Drexel Roads prior to the completion of the amended master plan described in Section 3.1.1.1 above, they may submit a plan to the City for the master planning of the area of approximately

fifty (50) acres located on the northeast and southeast sides of Drexel Road, where it intersects with Houghton Road, as a Commercial Master Plan. The Commercial Master Plan shall demonstrate the internal cohesive and integrated development of the commercial areas, the integration of the commercial areas with the surrounding areas, conformance with the Impact Standards, and conformance with the master plan. Within ninety days of the Mayor and Council approval of a Commercial Master Plan, all Developers shall provide the cross access easements necessary to implement the approved Commercial Master Plan. No commercial development may proceed prior to the approval of either the Amended Master Plan described in Section 3.1.1.1 or the Commercial Master Plan described in this section. The Developers shall cooperate and use their best efforts to expedite the planning for and development of the commercial areas outside of Neighborhood 1.

3.1.1.3. The amendment to the Civano Master Plan for Neighborhoods 2 and 3, and for the commercial areas outside of Neighborhood 1 may be implemented through adoption of a specific plan or through the adoption of Planned Area Developments. Future development shall be in conformance with the adopted Civano Master Plan, specific plans and planned area developments.

3.1.2 Master Plan Amendments. The Civano Master Plan may be amended to provide for the reallocation of uses, densities, infrastructure, open spaces and other conditions provided that any such amendment maintains substantial compliance with the overall Master Plan and the Civano IMPACT System (as may be revised) through out the Civano Property as a whole. Any major amendment to the Civano Master Plan shall be approved by the City as a change of the 1991 Rezoning conditions.

3.1.3. Planned Area Development. Achieving Civano’s development goals and objectives, including the principles of neo-traditional planning to encourage an integrated mix of uses and activities, requires a degree of regulatory flexibility that may include amendments to the 1991 Rezoning, the Existing Zoning, the Neighborhood 1 PAD and to future zoning. The Developer may submit proposals to create additional PAD zones provided that such PAD zones are in substantial conformance with the Civano Master Plan and the concepts contained in the Land Uses Memorandum (as they both may be amended from time to time) and this Revised Development Agreement. Among other things, the PAD zone may:

3.1.3.1. Combine aspects of several residential zones to allow the Developer flexibility in the allocation of residential densities;

3.1.3.2. Provide for minor expansions of home occupations in residential neighborhoods and on residential property;

3.1.3.3. Provide for neighborhood oriented commercial and community centers within each residential neighborhood at reasonable walking distances from most proposed residences;

3.1.3.4. Provide for the integration of certain industrial/office uses that are compatible with the community character, with existing and future residential uses in Civano, and with commercial uses in the Village Center area;

3.1.3.5. Provide in the general planning and site development of the Civano Project the option for live-work units that may be used for retail outlets for artisans, the manufacturers of specialty goods and entrepreneurs;

3.1.3.6. Permit the expansion of residential uses into the bench areas identified on the conceptual land use map of the Land Uses Memorandum (as it may be amended) in order to achieve the target number of single family homes established in the Civano Master Plan (as it may be amended); and

3.1.3.7. Permit the modification of set backs, lot coverage regulations and development standards to encourage community interaction and pedestrian activities.

3.1.4. Grading Restrictions. The Developer has a policy of selective, rather than mass grading. Wherever conditions allow at Civano, the Developer will restrict grading to preserve not only the designated set aside and open spaces, but where possible, the natural vegetation within developed areas. The Developer agrees to restrict grading to the minimum reasonably necessary to achieve the development objectives of Civano, retaining or salvaging viable existing vegetation to protect the environment. Where the intensity of development (such as the Village Center) requires complete grading, the smallest practical area will be disturbed.

3.1.5. Modified Development Standards. In order for the Developer to achieve Civano's sustainability goals embodied in the Master Plan (as it may be amended) and the Revised Civano IMPACT System and the Revised MOU, the Developer may obtain certain modifications to the general development standards found in the City's Land Use Code and administratively adopted development standards for the development of subsequent phases or neighborhoods within Civano similar to those that the City previously reviewed and approved for the Neighborhood 1 PAD. Requested modifications may include changes to standard street widths to conform to the 1994 Institute of Transportation Engineers information report entitled "Traffic Engineering for Neo-Traditional Neighborhood Design" attached hereto as **Exhibit "10"**.

3.1.6. Private Controls. The Developer has provided for the creation of a system of private governance and control for Civano, including the creation of a master community association; individual neighborhood homeowner associations; through the recording of covenants, conditions and restrictions governing the Civano community as a whole under the Declaration of Covenants, Conditions, Restrictions and Easements for Civano: The Tucson Solar Village, recorded in the Office of the Pima County Recorder on March 13, 1997, at Docket 10501, Page 1724, as amended by the Amended Declaration of Covenants, Conditions, Restrictions and Easements for Civano: The Tucson Solar Village, recorded in the Office of the Pima County Recorder on November 3, 1998, at Docket 10915, Page 639 (collectively the "Master CC&Rs") (as may be subsequently amended). Additionally, private controls for Neighborhood One were adopted as the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Civano 1: Neighborhood 1, recorded in the Office of the Pima County Recorder on January 1, 2000, at Docket 11206, Page 2132. These controls shall be kept in full force and effect during the term of this Revised Development Agreement and shall include controls that insure the future application of the Revised Civano IMPACT System performance standards to new construction at Civano. The Developer shall further prepare and impose on individual neighborhoods, phases or subdivisions, covenants, conditions and

restrictions consistent with the Master CC&Rs that will likewise insure future application of the Revised Civano IMPACT System to new construction.

3.1.7. Recreational Facilities. The parties will cooperate on an initial conceptual design of recreational facilities and the initial phase of a district park on the Civano Property, to be integrated into the City's general recreational plan. The recreational facilities shall include appropriate facilities to serve Civano and the surrounding area as determined by the City Parks and Recreation Department. If the recreational facilities are located next to the school site identified in the Master Plan, the parties will, to the extent possible, consult on the design with the Vail School District. The initial conceptual design shall take place before the City submits to the voters in an election the general obligations bonds that will provide the necessary financing for the recreational facilities.

3.1.7.2. The parties intend that the Master Developer shall construct the recreational facilities and that the City shall then buy the completed facilities as a turn key operation at a price, including design and construction costs, that is mutually acceptable to the parties. The price shall be determined before the commencement of construction and shall not exceed a combined cost to the City of \$4,000,000.

3.1.7.3. The Master Developer's obligation to begin final design and construction of the facilities and the City's obligation to buy the facilities shall be contingent upon voter approval of up to \$4,000,000 in general obligation bonds at the City's next bond election after the bond election scheduled for 2005, or at a subsequent election should the measure fail in the 2005 bond election. If the general obligation bonds provided for herein are not approved by May 30, 2007, or the City does not place such general obligation bonds before the voters, the parties' obligations under this Section 3.1.7 shall be terminated without any cost or expense to the City unless the parties mutually agree in writing to extend the obligations.

3.1.7.4. After voter approval of up to \$4,000,000 in general obligation bonds to finance the recreational facilities, the parties will further cooperate in the final design process for the recreational facilities on the Property.

3.1.7.5. The Master Developer's obligation to begin final design and construction of the facilities and the City's obligation to buy the facilities shall be contingent upon completion of construction of 1,000 dwelling units on the Civano Property. The Master Developer may, at its discretion, begin final design and construction when the project has less than 1,000 units. The Developer is not obligated to begin construction of the facilities until the City has indicated its readiness and capacity to buy the facilities, but the Developer shall begin construction of the facilities no later than one year after bond funding has been finally approved in an election, and all challenges, if any, have been exhausted.

3.1.8. Master Developer's Obligation to Continue Development. The Master Developer shall continue residential development of the Property as set forth in this Revised Development Agreement until a minimum of 1,250 dwelling units have been constructed on the Property. In the event that the Master Developer does not construct 1,250 dwelling units by April 1, 2012, the Master Developer shall indemnify the City for its initial investment in

accordance with Section 4.2 and the “Amended Indemnity Agreement” attached in **Exhibit “11”**.

3.1.9. Application of Profits. As part of its obligations under the Original Development Agreement, the Developer agreed to contribute ten percent (10%) of its net profits to a not for profit entity it established for research, education and application of sustainable development principles. The Developer has not yet achieved overall profitability. Accordingly, within ninety (90) days of the approval of this Revised Development Agreement by the Mayor and Council, the Developer shall make a one-time contribution in the amount of two hundred thirty-four thousand and twenty-six dollars (\$234,026.00) to an escrow account of the City’s designation, which amount shall satisfy in full the Developer’s support obligation under Section 1.2.3, Application of Profits, of the Original Development Agreement. The contribution provided for in this section may be paid to an entity or entities as specified by the Mayor and Council in its discretion.

3.2 City Responsibilities.

3.2.1. Expeditious Processing. The City shall continue to undertake and process in an expeditious manner all actions necessary to permit the development of the Property in accordance with the Land Uses Memorandum (as it may be amended), the Master Plan (as it may be amended), and this Revised Development Agreement, including but not limited to, any applications by the Developer for changes to the Master Plan, the Master Block Plat, and any future applications for new PAD zones, specific plans, subdivision plats and other development approvals and licenses.

3.2.2. Infrastructure Improvement Financing. The City will cooperate with the Developer in the creation of municipal improvement districts (“MIDs”), to the extent permitted by law, for the construction of Infrastructure Improvements. The City has previously made an MID available to the Developer to fund the construction of certain Infrastructure Improvements under the terms of the Original Development Agreement. Accordingly, the terms of the Original Development Agreement shall continue to govern the previously approved MID until its construction and financial obligations have been satisfied.

3.2.3. Project Manager. As more fully described in Section 5.1 of this Revised Development Agreement, the City has designated and will continue to designate a City employee to serve as the Project Manager for Civano.

3.2.4. Governmental Agency Funding. The City will cooperate with the Developer to seek available public-sector funding for Civano, including funding from the Arizona Department of Commerce and other federal, state or local authorities as may be required to meet the needs of the Civano Project.

3.2.5. Cooperation. The City shall cooperate with the Developer to obtain the full release of all State Land Patent Conditions on the Property. The City shall further cooperate with the Developer to seek ASLD’s approval of alternatives to the original sewer requirements as described in the State Land Patent Conditions and Amendment No. 1 where technical and economic requirements indicate that such alternatives are advisable.

3.2.6. Joint Responsibilities. Conditions Precedent and Effective Date of the Revised Development Agreement. This Revised Development Agreement is premised upon the approval by the Mayor and Council of the amendment in the Civano Master Plan in Civano/Pulte, Bilby Road C9-91-14 in order to permit the proposed development of the Southwestern Residential Development and the prospective purchase of Neighborhoods 2 and 3 in their entirety by Pulte. The effective date of this Revised Development Agreement shall be the date upon which both conditions have been completed. In the event that either condition is not completed by January 31, 2004, this Revised Development Agreement, the Revised IMPACT System standards and the Revised MOU are null and void and the Original Development Agreement as amended, the IMPACT System standards and the MOU as they exist prior to these revised documents shall remain in full force and effect.

4. Civano Infrastructure Improvements.

4.1. Infrastructure Improvements. The City and Developer acknowledge that the Property, as originally acquired, consisted of vacant land. Consequently, the Infrastructure Improvements (as defined herein) were constructed to serve development at Civano and along the Houghton Road corridor. The City and the Developer each agreed to fund and did fund portions of the Infrastructure Improvements and the Developer dedicated all necessary rights-of-way and easements for the Infrastructure Improvements. The Developer also funded and constructed the infrastructure required for Neighborhood One and is in the process of designing the same for the remainder of the Civano Property.

4.2. Indemnity Agreement for City Infrastructure Improvements. As part of its obligations under Section 4.2 of the Original Development Agreement, the City caused the construction of certain Infrastructure Improvements including extending the existing sewer line from its terminus outside of the Property and south of the Pantano Wash to a point on the Property connected to the sewer lines constructed for Neighborhood One (the "City Infrastructure Improvements") at a cost of \$3,000,000.00. As a condition hereof, the Master Developer will indemnify the City for the proportional cost of the City Infrastructure Improvements pursuant to the Amended Indemnity Agreement, attached hereto as Exhibit 11, upon the terms set forth therein.

4.3. Dedication of Public Rights-of-Way, Public Facilities to the City. The parties acknowledge that most of the streets, sewer easements, drainage rights-of-way and other necessary public infrastructure in Civano will be dedicated to the City, and maintained by the City upon completion by the Developer pursuant to plans and specifications approved by the City. In some cases, where the parties agree, street and alley rights-of-way may be owned and maintained by a homeowners association.

5. Project Implementation and Management.

5.1. Project Manager. In order to expedite the City's review and approval of the planning, zoning, subdivision platting, infrastructure improvement plans, and building plans for Civano, to assist the Developer in the marketing of Civano to developers, builders and the ultimate consumers of Civano residential, commercial and other non-residential space and to serve as an ombudsman for the City in connection with the City's involvement with the Civano

Project, the City Manager shall designate a City employee or employees to perform the functions of "Project Manager". The City shall fund and support the position of Project Manager until the earlier of (i) the date that the Developer has developed and sold 1,250 dwelling units, or (ii) April 1, 2012. The Project Manager's functions are further described in Section 5.1.1 and 5.1.2 below. The parties agree that these functions may be delegated by the City and the Project Manager to other appropriate City employees on a part-time basis or that a project team may be identified to assist the Project Manager. Regardless of such delegation, the Project Manager shall be responsible for the ultimate completion of the Project Manager's functions. The City shall notify the Developer of the person or persons designated as Project Manager.

5.1.1. Development Review Coordination Functions. The Project Manager will be responsible, among other things, for coordinating and expediting the City's review of the Master Developer's Master Plan amendments, specific plan applications, PAD zone applications, Master Block Plat revisions and related engineering studies, subdivision plats, improvement plans, and the builders' plan review and permitting process. The Project Manager is expected to communicate frequently with the Master Developer and its representative on such matters. In conjunction with the Developer, the City shall establish and adhere to procedures for the expedited review of rezoning, specific plan, PAD, subdivision plat, development plan and improvement plan submittals including but not limited to the establishment of and adherence to minimum times for the City's review of initial submittals and resubmittals.

5.1.2. Economic Development Function. The City and the Developer contemplate that the Project Manager will be primarily responsible for the City's efforts to promote the goals of Civano, particularly the location of businesses and the creation of job opportunities in Civano. In carrying out this function, the Project Manager will coordinate the efforts of the City's Office of Economic Development and appropriate outside agencies, such as the Greater Tucson Economic Council.

5.2. City Review of Certain Administrative Decisions. The City shall designate the City Manager or his designee as the City representative for the resolution of the following matters in a timely manner. The authority of this individual to resolve such matters under this Revised Development Agreement may be invoked by either the Project Manager or the Developer. The use of this procedure shall not be deemed a waiver or prevent the pursuit of any remedies a party may have under Section 7.8 of this Revised Development Agreement.

5.2.1. Technical Disputes. The City and the Developer recognize that during the planning and development of Civano, disputes, disagreements or differences in professional and technical opinion may arise between the City and its staff, and the Developer and its consultants concerning the development of the Property. If such disputes do not involve the application of the provisions of the Tucson Code, including the Land Use Code, Uniform Building Code, the Fire Code or the City's Administrative Directives for which there are specific procedures for the making or appeal of decisions, they may be submitted to the City Manager or his designee for resolution.

5.2.2. Memorandum of Understanding. The City and the Developer have executed the Revised MOU, attached hereto as **Exhibit "8"**, for the review, monitoring, and implementation of the Revised Civano IMPACT System. The Revised MOU may be further

amended by the City and the Developer. In the event that there is a dispute regarding the Revised MOU, that dispute may be submitted to the City Manager or his designee for resolution.

5.2.3. Resolution of Disputes Regarding Protected Development Rights. In the event the parties are unable to resolve a dispute regarding Protected Development Rights as provided in Section 6.3, or the application of Future Regulations under Section 6.3.3, the City Manager or his designee shall resolve the matter in a manner consistent with the provisions of Section 6.3.3 and to the extent that such resolution does not require action by the Mayor and Council of the City.

6. Protected Development Rights.

6.1. Purpose. One of the purposes of this Revised Development Agreement is to establish legally protected rights for the development of the Civano Property in a manner which is consistent with the ordinances, rules, regulations, permit requirements, development fees (as defined in A.R.S. § 9-463.05), other requirements, and/or official policies of the City in effect on the Effective Date and which apply to the development of the Civano Property in accordance with the Master Plan (as amended) and the PAD Zone (collectively the “Existing Regulations”), in order to ensure reasonable certainty, stability and fairness to the Developer over the term of this Revised Development Agreement.

6.2. Protected Development Rights. The Developer shall be entitled to develop the Civano Property during the term of this Revised Development Agreement with the permitted uses, density and intensity of uses, maximum height and size of buildings, reservation or dedication of land for public purposes and provisions to protect environmentally sensitive land, phasing or time of construction or development or the condition, terms, restrictions and requirements for public infrastructure and financing of public infrastructure as permitted by the Master Plan (as amended) and the PAD Zone and this Revised Development Agreement (collectively the “Protected Development Rights”). The Developer’s Protected Development Rights shall not be substantially impaired as a result of the City’s application and enforcement of ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies of the City adopted or approved after the Effective Date (excluding the PAD Zone) (the “Future Regulations”). The Developer’s Protected Development Rights shall apply to the Civano Property as a whole and may not be separately applied to any portion of the Civano Property if there is any default or breach by the Developer of any obligation under this Agreement.

6.3. Application of Future Regulations. The Developer shall be subject to the Future Regulations governing development of the Civano Property as provided below:

6.3.1. Developer Consent. The City may apply any Future Regulations to the development of the Civano Property if the Developer consents in writing.

6.3.2. Categorically Applicable Future Regulations. The following Future Regulations shall be applicable to the development of the Civano Property:

6.3.2.1. Supervening Authority. The Future Regulations that are enacted as necessary to comply with mandatory requirements imposed on the City by county, state or

federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that any such ordinance is equally applicable to all areas of the City.

6.3.2.2. Uniform Code Authority. The Future Regulations that are updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, fire and similar construction and safety-related codes, such as the Uniform Building Code, which updates and amendments are generated by a nationally-recognized construction/safety organization, such as the International Conference of Building Officials, or by the county, state or federal government or by the Pima Association of Governments; or are amendments to such construction or safety codes adopted by the City for the purpose of conforming such codes to conditions generally existing in the City.

6.3.2.3. Threat to Public Health and Safety. The Future Regulations that are applied to the Civano Property after public hearing and an opportunity for comment, and the City determines that the Future Regulations are (I) based upon substantially changed circumstances from those which existed on the Effective Date; (ii) reasonably necessary to alleviate a legitimate and severe threat to public health and safety; and (iii) the minimal and least intrusive alternative practicable.

6.3.2.4. Development and Administrative Fees. The Future Regulations are increases in existing types or categories of fees or provide for the imposition of development impact fees enacted pursuant to A.R.S. § 9-463.05 , provided any fee increase or impact fee assessment is equally applicable to all areas of the City, applies to legislatively designated benefit or assessment areas that are larger than Civano, or is applicable to the Developer in amounts no greater than similarly situated developers or builders in the City. Development impact fees which may be imposed pursuant to A.R.S. §9-463.05 shall credit to the Developer all expenditures by the Developer upon items for which a fee is calculated and assessed based upon the methodology and costs used to determine the fee. Credits shall not exceed the assessed fee.

6.3.3. Future Regulations Which Do Not Contravene Protected Development Rights. The City may apply Future Regulations to the development of the Civano Property provided that such Future Regulations are not inconsistent with or contrary to the Protected Development Rights set forth in Section 6.2, subject to the following procedures:

6.3.3.1. Developer's Right to Contest Application of Future Regulation. The Developer shall have the right to contest the application of any Future Regulation applied to the development of the Civano Property pursuant to Section 6.3.3 if the Developer contends that the Future Regulation is inconsistent with or contrary to the Developer's Protected Development Rights under this Agreement. The Developer may initiate such a procedure by notifying the City Manager or his designee and the Director of Development Services Center of the Developer's objection to the application of any Future Regulation under Section 6.3.3 and the Developer's request for resolution of its objection. No Future Regulation shall be applied to the Civano Property once such notice has been provided to the City and until the matter is resolved pursuant to this Revised Development Agreement.

6.3.3.2. Resolution of Developer's Contest to Application of Future Regulation; Criteria. Upon notice to the City pursuant to Section 6.3.3.a above, the City shall take the following steps to resolve the Developer's objections to the application of any Future Regulation under Section 6.3.3 by resolving the dispute pursuant to Section 5.2.3 to the extent the City has the authority to do so, or, if the matter may not be legally resolved administratively, by providing resolution of the matter by Mayor and Council. In resolving any dispute under this Section, it shall be the burden of the City to establish that: (i) the Future Regulation is not inconsistent with or contrary to the Developer's Protection Development Rights (ii) the Future Regulation does not materially impair the Developer's Protected Development Rights; (iii) the Future Regulations has the least burdensome and intrusive impact on the development of the Civano Property as is practical under the circumstances; and (iv) the objective of the Future Regulation cannot be met by any reasonable alternative.

6.3.3.3. Remedies. If the City fails to establish the criteria set forth in Section 6.3.3.c above, the City shall modify the Future Regulation to provide for the Developer's Protected Development Rights or shall pay appropriate compensation to the Developer for any loss of Protected Development Rights.

6.3.4. Waiver or Modification of Applicable Future Regulation. The Developer may present to the appropriate City administrative officer or Mayor and Council information and argument supporting its belief that the City's purpose for adopting any Future Regulation, notwithstanding its applicability to the development of the Civano Property under Sections 6.2.2 or 6.2.3, either is currently accomplished by the Existing Regulations, or can be substantially accomplished by other regulations more consistent with the provisions of this Agreement and less detrimental to the goals of Civano. The City will in good faith consider the Developer's representations in the adoption of such Future Regulations.

6.4. Anti-Moratorium. No moratorium, as that term is defined in A.R.S. § 9-436.06, shall be imposed on the Civano Property unless it is imposed pursuant to a City-wide ordinance which complies with the provisions of A.R.S. § 9-436.06, as adopted, and not as that provision may be amended or repealed subsequent to the Effective Date.

6.5. Additional Property. Upon the mutual agreement of the parties, this Revised Development Agreement may be amended from time to time at the sole request of the Developer to incorporate into this Revised Development Agreement such additional property as the Developer may from time to time designate (the "Additional Property"). The parties agree that should Developer seek to incorporate such Additional Property or portions thereof and the City consents to such incorporation, then: (i) thereafter, such Additional Property shall be included in the Civano Property and shall be subject to and shall benefit from all provisions of this Agreement applicable to the Civano Property, and any reference herein to the Civano Property shall include such Additional Property; and (ii) the City and the Developer shall cooperate to prepare and record with the Pima County Recorder's Office an amendment to this Revised Development Agreement describing that Additional Property to be incorporated.

7. General Provisions.

7.1. Recitals Incorporated. The recitals set forth in **Exhibit “1”** are accepted by the parties to the Revised Development Agreement although they have no binding effect on the parties.

7.2. Exhibits. Any exhibit attached to this Revised Development Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Revised Development Agreement.

7.3. Recordation. This Revised Development Agreement shall be recorded in its entirety in the official records of Pima County, Arizona not later than ten (10) days after this Revised Development Agreement is executed by the parties.

7.4. Amendments. No change or addition is to be made to this Revised Development Agreement except by a written amendment executed by the City and the Developer. Within ten (10) days after any amendment to this Revised Development Agreement, such amendment shall be recorded in the official records of Pima County, Arizona.

7.5. Waiver of Claims. The parties acknowledge that the City and the Developer have substantially complied with the obligations and the requirements as of December 8, 2003, of the Original Development Agreement, as amended, and acknowledge that neither party shall have any claim for any breach of or default under the Original Development Agreement, as amended, arising out of any action or lack of action, any event or the failure to perform any duty under the Original Development Agreement, as amended, that occurs before December 8, 2003. This waiver shall not apply to the Developer’s continuing obligations and shall not limit the rights of any parties to enforce continuing obligations under this Revised Development Agreement after December 8, 2003.

7.6. Future Effect.

7.6.1. Successors and Assigns. Subject to the provisions of this Section, all of the provisions of this Revised Development Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Revised Development Agreement pursuant to A.R.S. § 9-500.05(D). The Developer may assign all or a portion of its rights and obligations under this Revised Development Agreement, provided:

7.6.1.1. The assignment is to a person or entity that has acquired all or a portion of the Property and the interest assigned is limited to that portion of the Civano Property; and

7.6.1.2. The assignment is by written instrument, expressly assigning such rights and obligations, recorded in the official records of Pima County, Arizona; and

7.6.1.3. The Developer has provided prior written notice of the assignment to the City and the City has approved the assignment.

7.6.1.4. The rights and obligations of the Master Developer shall be assignable only if expressly stated in writing with the prior approval of the City.

7.6.1.5. The City Manager or his designee is hereby authorized to provide consent to an assignment on behalf of the City. If the City fails to object in writing to the assignment within fifteen (15) days of the date of the notice, the City shall be deemed to have consented to the assignment.

7.6.1.6. The City shall not unreasonably withhold or delay providing consent to any assignment requested by the Developer.

7.6.1.7. Notwithstanding the foregoing, the City's consent shall not be required in order for the Developer to assign an interest in the Protected Development Rights established by Section 6 where such interest is limited to a portion of the Civano Property which is subject to the assignment.

7.6.1.8. In the event of a complete assignment by the Developer of all of the rights and obligations of the Developer under this Revised Development Agreement, and upon notice to and approval by the City, the Developer's liability under this Revised Development Agreement shall terminate effective upon the assumption of the Developer's rights and obligations hereunder by the Developer's assignee(s).

7.6.1.9. The rights and obligations set forth herein shall not be assignable to any party owning less than twenty-five (25) residential lots or seven (7) non-residential acres of the Civano Property.

7.6.2. Term. The term of this Revised Development Agreement shall commence as of November 19, 1996, and shall terminate on November 18, 2012.

7.6.3. Termination Upon Sale to Public. Except as otherwise provided in this Revised Development Agreement, the City and the Developer hereby acknowledge and agree that this Revised Development Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Property. Therefore, in order to alleviate any concern as to the effect of this Revised Development Agreement on the status of title to any of the Property, so long as not prohibited by law, this Revised Development Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user thereof and thereupon such lot shall be released from and no longer be subject to or be burdened by the provisions of this Revised Development Agreement.

7.7. Notices. All notices, requests, demands or other communications ("Notices") required by this Revised Development Agreement or otherwise given in respect of any matter with which disagreement is concerned shall be in writing and served by personal delivery, recognized overnight courier service, electronically confirmed telecopy with a follow-up copy by regular United States mail, or by deposit in the U.S. Postal Service, certified mail, return receipt requested, with proper postage affixed, addressed and directed to the party to receive the same as follows:

If to the City:

City Clerk
City of Tucson
City Hall, 9th Floor
P. O. Box 27210
255 West Alameda
Tucson, Arizona 85726-7210

With copies to:

City Manager's Office
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210

Office of the City Attorney
City of Tucson
City Hall, 7th Floor
P.O. Box 27210
255 West Alameda
Tucson, Arizona 85726-7210

If to Developer:

Pulte Homes, Inc.
c/o Paula Meade
6893 N. Oracle Road
Suite 121
Tucson, Arizona, 85704

The Community of Civano LLC
c/o Fannie Mae
Judith L. Kilroy
3900 Wisconsin Avenue NW
48H-306
Washington, D.C. 20016-2892

Case Enterprises
6280 Campbell Ave.
Tucson, Arizona 85706

With copies to:

Mary Beth Savel, Esq.
Lewis and Roca LLP
One South Church Avenue, Suite 700
Tucson, Arizona 85701-1611

Thomas Dolan, Esq.
3900 Wisconsin Avenue NW
48H-306
Washington, D.C. 20016-2892

Bruce G. Temkin, Esq.
100 Pearl Street, 14th Floor
Hartford, CT 06103

Except as otherwise specifically stated in this Revised Development Agreement, all Notices shall be effective upon delivery and shall be deemed delivered on the date when actually received. Any party may designate a different person or entity or change the place to which any Notice shall be given as provided in this Revised Development Agreement, which Notice shall be effective after the same is actually received by the other party.

7.8. Default; Remedies. Failure or unreasonable delay by any party to perform any term or provision of this Revised Development Agreement for a period of sixty (60) days after written notice thereof from another party shall constitute a default under this Revised Development Agreement. The notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured. In the event of a default under this Revised Development Agreement by any party, the non-defaulting party shall be entitled to all remedies in both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date such sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are repaid in full.

7.9. Waiver. Except as provided in Section 7.5, no delay in exercising any right to remedy shall constitute a waiver thereof, and no waiver by the City or the Developer of the breach of any covenant of this Revised Development Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Revised Development Agreement.

7.10. Governing Law. This Revised Development Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Revised Development Agreement is subject to the provisions of A.R.S. § 38-511.

7.11. Cooperation in the Event of Legal Challenge. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Revised

Development Agreement, the parties agree to cooperate in diligently defending such action or proceeding.

7.12. Severability. If any term, provision, covenant, or condition of this Revised Development Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Revised Development Agreement shall continue in full force and effect, provided that the overall intent of the parties is not vitiated by such severability.

7.13. No Partnership: Third Parties. It is not intended by this Revised Development Agreement to, and nothing contained in this Revised Development Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the City. No term or provision of this Revised Development Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party to this Revised Development Agreement, and no such other person, firm, organization or corporation shall have any right or cause of action under this Revised Development Agreement.

7.14. Good Standing; Authority. Each of the parties represents and warrants to the other (i) that it is duly formed and validly existing under the laws of the states of Arizona, with respect to the Developer, or a municipal corporation within the state of Arizona, with respect to the City; (ii) that it is an Arizona limited liability company, or municipal corporation, duly qualified to do business in the State of Arizona and is in good standing under applicable state laws; and (iii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

7.15. Names and Plans. The Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, studies, reports, programs, designs and work products of every nature at any time developed, formulated, paid for, or prepared by or at the instance of the Developer in connection with the Property; provided, however, that in connection with any conveyance of portions of the Property to the City, such right pertaining to the portions of the Property so conveyed shall be assigned, to the extent, that such rights are assignable, to the City. Notwithstanding the foregoing, the Developer shall be entitled to utilize all such materials described herein to the extent required for the Developer to construct, operate or maintain improvements relating to the Property.

7.16. Counterparts. This Revised Development Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

7.17. Compliance with State Laws. All actions taken by the City pursuant to this Revised Development Agreement shall be in accordance with applicable state laws including, but not limited to, A.R.S. § 34-201 et seq. and A.R.S. § 42-303(D).

7.18. Continuing Disclosure. The Developer acknowledges that the MID bonds will be subject to Securities and Exchange Commission Rules 13(c)-2(12) (the "Rule") which

requires that continuing disclosure by the city and all obligated persons, as defined in the rule. The Developer acknowledges that it will be an obligated person pursuant to such rule. The Developer further agrees and understands that the City will follow a modified version of the California debt advisory commission guidelines for land based securities (the "CDAC guidelines") with respect to the MID bonds; provided, however, that both the Developer and the City agree that Section 3 of the CDAC guidelines will be approached through a contractual arrangement between the City and the Developer and not through a covenant running with the land.

7.19. Authorization for Execution. The Mayor and Council have authorized the execution of this Revised Development Agreement by Resolution No. _____ to which this Revised Development Agreement is attached.

IN WITNESS WHERE OF, the parties have executed this Revised Development Agreement as of the dates written below.

CITY OF TUCSON, an Arizona municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Dated: _____

FIRST AMERICAN TITLE INSURANCE
COMPANY, Trustee under Trust 4717

By: _____
Its: _____
Date: _____

THE COMMUNITY OF CIVANO, LLC, an
Arizona limited liability company

By: FANNIE MAE, its Sole Member

By: _____
Its: Authorized Officer
Date: _____

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the authorized representative of First American Title Insurance Company, Trustee under Trust 4717, in its capacity as Trustee only.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the Authorized Officer of Fannie Mae, the Sole Member of The Community of Civano, LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

PULTE HOME CORPORATION, a Michigan corporation,

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the authorized representative of Pulte Home Corporation, a Michigan corporation.

Notary Public

My Commission Expires:

CASE ENTERPRISES DEVELOPMENT CORPORATION, a Connecticut corporation,

By: _____
Its: _____
Date: _____

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 200____, by _____, the authorized representative of Case Enterprises Development Corporation, a Connecticut corporation.

Notary Public

My Commission Expires:

**REVISED
CIVANO DEVELOPMENT AGREEMENT
RECITALS**

Background of the Development Agreement

1. The City and Pima County established the Metropolitan Energy Commission (the “Commission”) to address energy conservation issues in the region. The Commission concluded that the design and construction of new development must focus on principles of sustainability: the use of the sun as a primary source of energy; the conservation and multiple uses of water; the configuration of uses on the land which minimize the use of fossil fuel and time-consuming automobile travel; the reduction of waste in both product and time; and the development of a sense of community, social interaction and place. The Commission conceived the “Civano Project” to demonstrate the feasibility of accomplishing these broad goals.

2. In 1988, the Commission, with the support of both the City and Pima County, applied for and received planning funds for the Civano Project from the Arizona Department of Commerce Energy Office. After analysis of several potential sites for the Civano Project, the Commission chose the Original Civano Property, located east of Houghton Road and southwest of the Pantano Wash. The Original Civano Property was controlled at that time by the Arizona State Land Department (“ASLD”).

3. The Commission subsequently filed for a planning permit from ASLD and contracted with a planning consultant to prepare a Master Plan for the Civano Project and to guide the rezoning of the Property. The Civano – Tucson Solar Village Development Plan (the “1991 Civano Master Plan”) was prepared and submitted to the City in July, 1991. The City approved the rezoning of the Property on October 14, 1991 (the “1991 Rezoning”) and required as a condition of that rezoning that future development conform to the 1991 Civano Master Plan. The 1991 Civano Master Plan was modified and subsequently approved by ASLD on March 5, 1992.

4. On November 14, 1994, the Mayor and Council of the City directed the City Manager to “aggressively administer” Civano, maintaining the “highest standards possible so that it will be a model project in the United States and worldwide.” The City Manager appointed a full time project manager in the City’s Office of Economic Development to work closely with ASLD to market Civano. Working with an advisory committee of interested business people and environmental advocates (the “Civano advisory committee”), the City received additional funding from the Arizona Department of Commerce Energy Office to obtain a new market study, current cost estimates, and other appropriate information. The City further contacted prospective developers and promoted the project locally and nationally.

5. After extensive study, the Civano advisory committee recommended the adoption of the Civano IMPACT System as the minimum standards for environmental performance. The Mayor and Council adopted these standards on October 2, 1995. The Impact System were adopted to clarify the requirement in the 1991 Rezoning for a report demonstrating energy and resource conservation measures that would be implemented.

6. Analysis of the expected revenues and expenses of the master development phase of Civano revealed the likelihood of a significant deficit, and led the Civano advisory committee to recommend that some public investment in the project was necessary and appropriate, given Civano's innovative nature and the community benefits to be derived from its realization. [Source??] On February 12, 1996, the City's Mayor and Council authorized the City Manager to negotiate development agreements with interested developers.

7. In 1995, ASLD commissioned an appraisal of the Property, which established its value at \$2,310,000. On December 7, 1995, the ASLD Board of Appeals accepted that valuation as the minimum bid price for the Original Civano Property. On April 10, 1996, the ASLD Board of Appeals approved an updated appraisal with the same estimated value. ASLD then announced its intention to conduct a public auction for the Original Civano Property.

The Parties

8. On July 1, 1996, the Mayor and Council approved the Development Agreement with TSD, ISD and Case Enterprises before the purchase of the Original Civano Property from the ASLD. Before the close of the purchase of the Original Civano Property from the ASLD, The Community of Civano and Case Enterprises acquired the interests of TSD and ISD and assumed the role of the Developer of Civano. A 3.278-acre portion of the Original Civano Property was sold in 1997 as a separate parcel to Civano Global Building, L.L.C. for the development of a commercial solar energy facility (the "Global Solar Parcel"), leaving the Civano Property (as defined herein) in its current configuration. Subsequently, in December 1998, Fannie Mae acquired all interest in The Community of Civano, and The Community of Civano in turn acquired full ownership and all the rights, title and interest to the Civano Property subject to those certain reversionary interests of the State of Arizona pursuant to the State Land Patent. The Community of Civano is currently the sole Developer, and TSD, ISD and Case Enterprises are no longer involved or obligated as a Developer of Civano.

History of the Revised Development Agreement

9. "Amendment No. 1" to the Development Agreement was authorized by Resolution 17680, adopted on June 23, 1997, and recorded at Docket 10592, Page 594 of the Pima County Records. Amendment No. 1 provides generally as summarized below:

a. Described the changes in ownership affecting the Property since the execution of the Development Agreement, including the sale of the Global Solar Parcel and the acquisition of TSD and ISD's interests by The Community of Civano and Case Enterprises Development Corporation and their concomitant assumption of the role of Developer of Civano;

b. Deleted references to the Developer's possible involvement in future master planning for state lands;

c. Deleted certain requirements for the neighborhood center of the proposed Neighborhood One;

d. Changed the identification of the proposed source for horticultural support for the project;

- e. Changed the distribution of certain profits to promote community education and research and to incorporate certain funds acquired in the construction of oversize sewer lines;
- f. Amended the provisions regarding the master planning for Civano, delaying the time for filing the master plan and a specific plan for Neighborhood One, and establishing the matters to be included in the master block plat for Civano;
- g. Identified dates and terms for the possible construction of a Southeast City Hall facility within Civano (which was subsequently clarified by the Clarification);
- h. Clarified that the City would provide assistance to the Developer and builders in Civano through the City's Builder Program;
- i. Clarified and delayed the date for the Developer's obligation for construction from one year following the effective date of the Development Agreement to the period February 1, 1998 to February 1, 1999;
- j. Established procedures for the release of State Land Patent Conditions (as herein defined) for Neighborhood One and for the balance of the Civano Property, including provisions regarding the construction of certain required sewer lines;
- k. Delayed the time for filing the specific plan [now planned area development plan] for Neighborhood One;
- l. Provided that on-site sewer lines and the cost of oversizing sewer lines could be included in proposed infrastructure to be constructed with City funds and amended certain phasing terms;
- m. Established requirements for construction of sewer lines that would satisfy the State Land Patent Conditions and provided for public easements for sewers;
- n. Clarified that a municipal improvement district for a specified phase or neighborhood of the Civano Project would not be approved until all State Land Patent Conditions for that phase or neighborhood of the Civano Project were satisfied;
- o. Stated that the effective date of the Development Agreement was November 19, 1996;
- p. Identified Neighborhood One as the initial area of residential and commercial development;
- q. Amended the provisions for City consent to the assignment of interests under the Development Agreement; and
- r. Added a provision regarding the Developer's obligations to disclose information in accordance with certain Securities and Exchange Commission Rules.

10. An “Addendum” to Amendment No. 1 was authorized by Resolution No. 17681 adopted on June 23, 1997, and recorded at Docket 10592, Page 633 of the Pima County Records.

11. An “Intergovernmental and Escrow Servicing Agreement” relating to Civano was authorized by Resolution No. 17679 adopted on June 23, 1997, and recorded at Docket 10658, Page 296 of the Pima County Records.

12. A “Clarification” to the amended agreement was authorized by Resolution No. 17758 adopted on August 4, 1997, and recorded at Docket 10607, Page 2595 of the Pima County Records.

13. “Amendment No. 2” to the Development Agreement was authorized by Resolution No. 17836, adopted on October 20, 1997, and recorded at Docket 10656, Page 444 of the Pima County Records. Amendment No. 2 made certain technical changes to the terms and locations for the sewer lines required to satisfy the State Land Patent Conditions (as defined herein).

14. “Amendment No. 3” to the Development Agreement was initially authorized by Resolution No. 18576 adopted on April 17, 2000, but was never executed by the parties.

15. As provided in the Development Agreement for the purpose of implementing the principles of energy efficiency and conservation that underlie the Civano IMPACT System to the extent technically and economically feasible, the parties executed a Memorandum of Understanding (the “Memorandum of Understanding” or the “MOU”) dated June 26, 1998. The Developer implemented the MOU in the development of Neighborhood One.

16. In 1997, the Developer initiated an amendment to the 1991 Rezoning by submitting a plan for the Civano Neighborhood 1 Specific Plan, approved on October 20, 1997, as amended on October 12, 1998, and subsequently renamed as the Civano Neighborhood 1 Planned Area Development (the “Neighborhood 1 PAD”).

State Land Patent

17. At the time of sale of the Original Civano Property to the Original Developer, the State of Arizona issued State Land Patent No. 5352533-01 (the “State Land Patent”) to transfer title to the private parties. The State Land Patent included certain “State Land Patent Conditions” that the Developer of the Property must satisfy. The State of Arizona retained a reversionary interest in the Property until these conditions were satisfied. The conditions included certain requirements for the construction of sewer lines to provide wastewater service to Neighborhood One, through and to the edge of the eastern boundary of the Property and through and to the edge of the southern boundary of the Original Civano Property.

18. State Land Department Order No. 481-96/97 dated April 29, 1997, determined that State Land Patent Condition “D” was satisfied for the entire Civano Property.

19. In order to proceed with the development of Neighborhood One, the City and the Developer reached an agreement with the ASLD for the construction of the sewer lines in a manner that permitted the full release of fee title to Neighborhood One to the Developer.

20. Neighborhood One was released from all State Land Patent Conditions by State Land Department Order No. 165-97/98 dated October 17, 1997. That Order further determined that State Land Patent Condition “F” was satisfied for the entire Civano Property.

21. Subsequently, State Land Department Order No. 179-00/01 dated November 17, 2000, determined that State Land Patent Condition “H(1)” was satisfied for the entire Civano Property. Additionally, State Land Department Order No. 239-2001/2002 dated January 17, 2002, determined that State Land Patent Condition “G(2)(c)” was satisfied for the entire Civano Property.

Current Status of the Civano Property

22. Since the adoption of the Development Agreement, Civano has grown and evolved as a residential neighborhood in the City’s southeast area. Neighborhood One’s infrastructure has been completed and the State Land Patent Conditions for Neighborhood One have been satisfied. As of the Effective Date of this Revised Development Agreement, Civano has largely achieved the IMPACT System. Compliance monitoring for IMPACT System remains on-going. Planning for the remaining phases or neighborhoods of the Civano Project is underway that may, as previously anticipated, involve amendments to the Civano Master Plan, and revisions to the IMPACT System and the MOU.

23. As provided in the Original Development Agreement, the City has spent three (3) million dollars over a period of three (3) years for the construction of public infrastructure which serves Civano and adjacent areas along the Houghton Road corridor south of Civano. The City also approved a municipal improvement district for construction of infrastructure within Civano. The Developer also has spent significant sums for infrastructure construction and the development of Neighborhood One of Civano and continues to spend significant sums for the planning, infrastructure and development of the remainder of the Civano Property.

24. Pulte has become interested in purchasing the remaining residential development in Neighborhoods 2 and 3. In order to proceed with the purchase of Neighborhoods 2 and 3, Pulte must have the approval for a change of rezoning conditions to permit the proposed development of the Southwestern Residential Development. Upon receiving that approval, Pulte has agreed to purchase Neighborhoods 2 and 3, to become a signatory to and the Master Developer of this Revised Development Agreement.

25. Sustainability must be profitable to be successful and to provide an attractive development model for future land developers. Therefore, Civano must be marketable and price-competitive and the costs associated with meeting the Civano IMPACT System must be considered within the financial projections. The parties herein reaffirm their commitment to strive to meet the Civano IMPACT System to the extent technically feasible and economically profitable, and recognize the need to execute the Revised Civano IMPACT System to amend and clarify the standards based on the changing technical and economic considerations of the Civano Project.

26. Unforeseen delays arose in the development and construction of Civano in conformity with the Development Agreement and the Civano IMPACT System prior to the date

of this Revised Development Agreement. However, the Developer's actual development experience has clarified the technical and economic feasibility of the Civano Project. The future success of Civano can be enhanced by amending and incorporating provisions into this Revised Development Agreement that reflect the Developer's past experience and the parties' desire to move the Civano Project forward in a productive and economically beneficial relationship.

27. The parties are entering into this Revised Development Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to clarify and facilitate development of the Civano Property by providing for, among other things: the permitted uses for the Civano Property; the density and intensity of such uses; the maximum height of proposed buildings within the Civano Property; the reservation or dedication of land for public purposes; the protection of environmentally sensitive lands; the phasing over time of construction or development on the Civano Property; the conditions, terms, restrictions and requirements for public infrastructure; and the financing of public infrastructure.

28. Development of the Civano Property pursuant to this Revised Development Agreement is consistent with the City's General Plan.

29. The ultimate development of the Civano Project on the Civano Property is a project of such magnitude that the Developer requires assurances from the City that the Developer will have the ability to complete the development of the Civano Property pursuant to the Master Plan (as it may be amended) before it will expend additional efforts and costs in the further development of the Civano Property. The City also requires assurances from the Developer that development of the Civano Property will be in accordance with the Master Plan (as it may be amended) and the terms and conditions of this Revised Development Agreement.

30. The development of the Property pursuant to this Revised Development Agreement will result in significant planning and economic benefits to the City by: (i) demonstrating the feasibility of the sustainability principles which form the bases of the Revised IMPACT System based on the actual development experience on site; (ii) requiring the development of the Civano Property to be consistent with the City's General Plan and the approved Master Plan (as it may be amended); (iii) providing for the acquisition, design, construction and installation of infrastructure necessary for future development of the Houghton Road corridor; (iv) increasing tax and other revenues to the City based on improvements to be constructed on the Civano Property; and (v) creating employment opportunities through the development of the Civano Property. Further, the development of the Civano Property pursuant to this Revised Development Agreement will result in significant benefits to the Developer by providing assurances to the Developer that it will have the ability to develop the Civano Property in a technically and economically feasible manner in accordance with the Master Plan (as it may be amended).