

**AMENDED AND RESTATED
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
- Exhibit “12” KB Real Estate Advisor’s & Appraisers, Inc.; Retail Pricing Range Analysis and Pro Forma Evaluation, dated May 20, 1996
- Exhibit “13” Settlement Agreement between The Community of Civano and Fannie Mae and the City of Tucson

**AMENDED AND RESTATED
CIVANO DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED CIVANO DEVELOPMENT AGREEMENT (the “Amended Development Agreement”) is entered into by the CITY OF TUCSON, an Arizona municipal corporation (the “City”) and THE COMMUNITY OF CIVANO, LLC, an Arizona limited liability company (“The Community of Civano”).

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

1. This Amended Development Agreement fully amends and restates the Original Development Agreement (as defined herein).
2. The Recitals that support this Amended Development Agreement provide a detailed explanation of the factual background of the Development Agreement (as subsequently amended and clarified), this Amended Development Agreement and the current status of the development of the real property affected by both agreements and are attached hereto 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 Zoning” 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 City Ordinance No. 8971 and Exhibit A, dated October 20, 1997, and as further amended by the adoption of the Civano Neighborhood 1 Planned Area Development by City Ordinance No. 8970, dated October 20, 1997, as revised October 12, 1998.
- 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. “Builder Program” means that program initiated by the City to train architects, builders, contractors, designers and developers in sustainability concepts as more fully described in **Section 6.3**.

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

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

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

1.10. “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.

1.11. “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.

1.12. “Civano 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 Amended Development Agreement or subsequent agreements with the written consent of the parties.

1.13. “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.

1.14. “Developer” means The Community of Civano, LLC, its successors and assigns.

1.15. “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, 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.

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

1.17. “Existing Zoning” means the current zoning of the 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. “ISD” means Investors for Sustainable Development [Civano], LLC, an Arizona limited liability company.

1.20. “Land Uses Memorandum” means a memorandum entitled “Principles and Conceptual Land Uses to be included within the Specific Plan,” dated May 22, 1996, 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.

1.21. “Master Plan,” “Civano Master Plan” or “Civano Development Plan” means the original master plan for Civano developed by the Metropolitan Energy Commission (the “Commission”) adopted by ASLD on March 5, 1992, as amended by City Ordinance No. 8971, dated October 20, 1997, attached hereto as **Exhibit “5,”** and any subsequent amendments to that plan that have been approved by the State of Arizona and by the City at the time when each such plan was in effect. The Master Plan shall further include such future amendments and clarifications as may be agreed upon by the parties and approved by the City.

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 standards.

1.23. “Neighborhood One” 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 Developer” means TSD, ISD and Case Enterprises Development Corporation while each of such entities was a party to the Original Development Agreement.

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

1.27. “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 6.1** herein.

1.28. “Revised Civano IMPACT System,” “Revised Civano IMPACT System standards” or “Revised IMPACT System standards” means that document that amends and

revises the Civano IMPACT System standards, amended as adopted by the Mayor and Council dated _____, 2003, attached hereto as **Exhibit “7”**.

1.29. “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”**.

1.30. “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”**.

1.31. “TSD” means the Trust for Sustainable Development [Arizona], Inc., an Arizona corporation.

2. Civano Energy Conservation and Sustainability Goals.

2.1. Implementation of IMPACT System Standards.

2.1.1. Commencement of Construction. The Developer has commenced construction on and in many cases completed Infrastructure Improvements (as defined herein) intended to serve Civano.

2.1.2. Neighborhood One Construction. The Developer has commenced the construction of Neighborhood One that includes an information center showcasing the principles of sustainable development, energy efficiency, water conservation, recycling, and other principles embodied in Civano. Neighborhood One also includes a neighborhood center with commercial and other non-residential uses, a neighborhood pool and other space dedicated to serve the residents’ and occupants’ needs. The parties recognize that providing for residential and commercial and other non-residential structures is an important model for the development of future phases of Civano and other developments in and around the City. The parties also recognize, however, that the development of viable commercial and other non-residential facilities depends on an adequate population base, general market and local community demand and the availability of outside sources of funding. Planning and site development for existing and future phases of the Civano Project shall provide the opportunity for commercial and other non-residential development conditioned upon market demand and availability of commercial financing.

2.1.3. Periodic Assessment of Performance. The Civano IMPACT System as adopted in 1995, and as applied under the Original Development Agreement provided for the implementation and monitoring of compliance with the IMPACT System standards in accordance with the MOU and the 1991 Zoning condition D(7). The Developer has provided reports on Civano’s progress. The parties agree to continued periodic assessments of performance under the Revised MOU as part of the future development and construction of the balance of the Civano Project.

2.2. 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 standards 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. Either party may request revisions to the IMPACT System standards, subject to approval by the Mayor and Council. Likewise, at the request of either party, the parties shall use their best efforts to prepare revisions to the MOU, subject to execution by the City Manager and the Developer. Copies of the Revised IMPACT System standards 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. As the master developer for Civano, the Developer has the following rights and responsibilities.

3.1.1. Master Planning. The development of the entire Civano Property shall be master planned as a cohesive development 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.

3.1.1.1. Master Block Plat Amendments. Civano’s development will likely occur in a number of phases, neighborhoods or subdivisions. To phase Civano’s development, to facilitate the marketing of the Civano Property to prospective developers and builders, and to dedicate to the City the collector streets and major drainage rights-of-way, the Developer previously prepared and filed and the City approved the Master Block Plat. As development of subsequent phases, neighborhoods and subdivisions of the Civano Property proceeds, the Developer may also prepare and submit to the City for review and approval amendments to the Master Block Plat, subsequent subdivision plats, development plans and more detailed engineering studies for blocks within the existing Master Block Plat which shall be processed expeditiously according to **Section 3.2.1**, and which approval shall not be unreasonably withheld or conditioned. Such changes to the Master Block Plat may reflect the then-current market conditions, technical feasibility and financing feasibility of the Civano Project, among other things.

3.1.1.2. 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 standards (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.

3.1.1.3. 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 requires complete grading because of use, planning or cost considerations, the smallest practical area will be disturbed.

3.1.2. 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 Amended Development Agreement. Among other things, the PAD zone may:

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

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

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

3.1.2.4. 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;

3.1.2.5. 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;

3.1.2.6. 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

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

3.1.3. 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, including but not limit to the following:

3.1.3.1. Modifications to the City’s street width standards consistent with the Neighborhood 1 PAD or the 1994 Institute of Transportation Engineers informational report

entitled “Traffic Engineering for Neo-Traditional Neighborhood Design,” attached hereto as **Exhibit “10”**, to include (i) a traveled street width of 20 feet, which may also include an additional eight foot parking or bicycling lane; and (ii) a minimum turning radius for emergency vehicles in part accommodated by off the street pavement in conjunction with the use of wedge or roll curbs as approved by the City.

3.1.4. Private Controls. The Developer shall provide 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 Amended 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.

3.1.5. Recreational Facilities.

3.1.5.1. 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. 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 obligation bonds that will provide the necessary financing for the recreational facilities.

3.1.5.2. The parties intend that the 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.

3.1.5.3. The 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, the parties' obligations under this **Section 3.1.5** shall be terminated unless the parties mutually agree in writing to extend the obligations.

3.1.5.4. 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.

3.1.5.5. The 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 Developer may, at its discretion, begin final design and construction when the project has less than 1,000 units. The City may, at its discretion, buy the completed facilities before voter approval of the general obligation bonds. 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 when the project has 1,000 dwelling units and bond funding has been finally approved in an election, and all challenges, if any, have been exhausted.

3.1.6. Developer's Obligation to Continue Development. The Developer shall continue development of the Property as set forth in this Amended Development Agreement until a minimum of 1,250 dwelling units have been constructed on the Property. Notwithstanding the foregoing, the Developer's obligation to continue development will terminate at the earlier of the development and construction of 1,250 units or April 1, 2012.

3.1.7. Application of Profits. To further evidence a spirit of collaboration with the City, the Developer, on or about March 11, 1998, filed with the United States Internal Revenue Service to establish a not-for-profit entity, known as Civano Research and Development Foundation (the "Foundation") to annually receive a fee equal to ten percent (10%) of the Developer's net profits, if any, to be used by such entity entirely within the City of Tucson for the research, education and application of sustainable development techniques to housing for low and moderate income households, as provided herein in **Section 4.4**. To date, the Civano Project has not achieved profitability. Notwithstanding that fact, as of _____, 2003, the Developer shall contribute \$100,000 in sewer credits, or cash equivalent if such credits have expired, and \$134,026 in cash to the Foundation, which amount shall satisfy in full the Developer's support obligation under the Original Development Agreement and this Amended Development Agreement. The parties agree that in furtherance of promoting the economic and environmental benefits of sustainable development to low and moderate income households, the Foundation will contribute substantially all of its assets (the "Contributed Capital") to the City's Community Services Department or its designee. The parties further agree that the Contributed Capital will be used by the City or its designee to finance or otherwise promote sustainable development techniques to housing for low and moderate income households.

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 Amended 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, subdivision plats and other development approvals and licenses.

3.2.1.1. If changes to the Master Plan are required in the future, the City will fully cooperate with the Developer in securing approval from ASLD for the changes to the Master Plan, or in obtaining approval from ASLD for a waiver of its review and approval obligations. Such cooperation may include, but is not limited to, written correspondence to the State Land Commissioner evidencing the City's formal approval of the Master Plan amendments proposed by the Developer and supporting the Developer's waiver request(s).

3.2.1.2. The City will accept and process the Developer's application for rezoning to a PAD zone, if any, which conforms to the basic development parameters outlined in the Land Uses Memorandum in a timely and expedited manner.

3.2.2. Infrastructure Improvement Financing. As more fully described in **Section 5** of this Amended Development Agreement, 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.

3.2.3. Project Manager. As more fully described in **Section 6.1** of this Amended 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. Builder Program. As more fully described in **Section 6.3** of this Amended Development Agreement, the City will establish a Builder Program to develop a marketing and technical support program to assist in training architects, builders and contractors on the techniques necessary to successfully implement sustainable development projects like Civano.

3.2.5. 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.

3.2.6. Amendment of Private Controls. The City shall cooperate with the Developer and support the Developer's submittal or submittals to ASLD for its approval of any future modifications or amendments to the Master CC&Rs or individual subdivision covenants as described in **Section 3.1.4** of this Amended Development Agreement.

3.2.7. 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.

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 4.1** above, 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 which will connect to the sewer lines constructed for Neighborhood One; and _____ (collectively the “City Infrastructure Improvements”) at a cost not to exceed \$3,000,000.00. As a condition thereof, the Developer has agreed to indemnify the City for the cost of the City Infrastructure Improvements pursuant to an indemnity agreement, as amended, attached hereto as **Exhibit “11”** (the “Amended Indemnity Agreement”) upon the terms set forth therein.

4.3. Sewer Requirements. State Land Patent Condition (H) contains certain conditions regarding on-site sewer construction and completion pertaining to the property (the “Sewer Requirements”) that may impact the sale of MID bonds. To satisfy State Land Patent Condition (H), the Developer agreed to construct and has constructed the following sewer lines, generally described as:

- (a) Neighborhood One sewer line, from the northwest corner of the Civano Property where it connects to the terminus of the off-site sewer connection to be constructed by the City continuing through the central area of the northwest parcel to the southern end the portion of the Civano Property to be platted as Neighborhood One.
- (b) Eastern sewer interceptor 1, which will extend from the northwest corner of the Civano Property where it connects to the terminus of the off-site sewer connection to be constructed by the City and continuing southeast to manhole 26.
- (c) Eastern sewer interceptor 2, which will extend from the southeastern end of Eastern sewer interceptor 1 at manhole 26 continuing southeast to the eastern boundary of the Civano Property as required by the patent conditions.
- (d) Southern sewer line, which will extend from the southern end of the Neighborhood One sewer line to the southern boundary of the Civano Property as required by the patent conditions.

Each of these sewer lines has been accepted by Pima County into its sewer system for continuous maintenance. The Developer has obtained the release of all the State Land Patent Conditions affecting Neighborhood One, including all sewer construction obligations. The Developer shall obtain the release of all remaining State Land Patent Conditions for the remainder of the Property as required by the Developer's agreements with ASLD.

4.4. Sewer Construction Credits. Non-monetary sewer construction credits from Pima County's Department of Wastewater Management for sewer construction that was required by ASLD and by Pima County Wastewater Management and that exceeded the requirements for the sewer service for the Property were used to reduce or eliminate the sewer connection fees for the initial home buyers in Neighborhood One. Those sewer credits, which were allocated by Pima County to the City of Tucson for the portions of the sewer lines which were constructed by the City, were transferred to the Developer in exchange for the Developer providing funding of equal value to the not-for-profit entity which was established to support the application of sustainable development techniques to development serving low and moderate income households within the City pursuant to **Section 3.1.7** of this Amended Development Agreement. In no event shall the Developer retain any portion of compensable value of the sewer credits for its own uses.

4.5. Sewer Requirement Easements. The Developer shall provide, at no cost to the City, all on-site easements necessary for any construction by the City or a MID to meet the sewer requirements at no cost to the City or a MID.

4.6. Dedication of Public Rights-of-Way, Public Facilities to the City. The parties acknowledge that most of the streets and drainage rights-of-way 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. Infrastructure Financing.

5.1. Municipal Improvement Districts. The City agrees to make available to Developer the use of MIDs to fund the construction of Infrastructure Improvements. Upon the submittal of a petition in writing from the Developer, the City shall initiate those procedures necessary to form one or more MIDs pursuant to A.R.S. 48-501, et seq., for the purpose of constructing or acquiring necessary Infrastructure Improvements. It is contemplated by the City and the Developer that the petitions filed in connection with the formation of an MID will contain the signature of one hundred percent (100%) of the owners within the proposed MID. Upon receipt of such petition, the City intends to approve an appropriate resolution for the formation of the MID and to take other actions necessary to issue bonds, amortized over a period of 25 years, in one or more series and in amounts necessary and sufficient to cover the cost of construction or acquisition of the Infrastructure Improvements to be constructed by the MID and all expenses and costs in connection with the issuance of the bonds. The City shall use its best efforts to expedite the formation of any MID requested by the Developer. The City will not be required or expected to use its revolving fund for any MID. No resolution of intention for the formation and funding of an MID shall be approved by the City unless the Developer has title to the portion of the Property to be subject to the proposed MID which is fully and completely

released from all conditions of the Patent or subject to release pursuant to escrow instructions in the IGA between the City and the State adopted in Resolution No. 17680, June 23, 1997.

5.1.1. Developer's Reliance Upon Future Financing. The parties acknowledge that the Developer has relied upon the intention of the City to make MIDs available for the financing of infrastructure in determining to purchase the Property and in assessing the economic feasibility of Civano. The Developer shall be entitled to all appropriate damages in the event that future proposals for MIDs are not approved by the City, except where the failure to approve an MID is necessary to protect the financial standing of the City.

5.1.2. Developer Participation in MID Process. To the maximum extent permissible under applicable law, the City will involve the Developer in the design and the construction management of the Infrastructure Improvements to be funded by a MID. To this end, the parties will explore the possible integration of a "design-build" concept with the City's MID process.

5.2. MID Assurances Formula.

5.2.1. Assurances for Single Phase MID Assessments. The Developer shall post assurances in the form of a cash deposit, a letter of credit, or other instrument mutually agreeable to the parties in an amount as calculated below to secure the principal and interest to be paid on MID bonds assessed to portions of the Property subject to such assessments. The assurances shall be in a form which shall be secure from the potential claims of a bankruptcy estate or other creditors in the event of a bankruptcy by the Developer.

5.2.1.1. The assurances shall be posted prior to the issue date of respective bond series and shall be subject to draws by the City on dates which coincide with the payments of principal and/or interest upon the bonds. In the event that Developer defaults on an assessment against property, the City shall be entitled to draw against the assurance to make the required payment of principal and interest.

5.2.1.2. The calculation for the amount of the assurance to be posted by Developer shall be the amount of principal and interest payments which would be required during the period of absorption as determined pursuant to subsection c. The period of absorption will commence on the day lots are legally offered for sale and lots will be anticipated to be sold on a straight line basis.

5.2.1.3. Each absorption period will be calculated assuming that lots will be sold at only one third the rate of the absorption projected in the market study attached hereto as **Exhibit "12"**, such additional independent studies or updates which are requested by the City Manager or his designee and paid for by the City, or a minimum of three years in the event an absorption rate cannot be determined from market studies.

5.2.1.4. The assurances for a particular MID bond series shall be subject to release on a quarterly basis commencing the first quarter following the posting of the assurance. The assurances shall be posted at least seventy-two hours before the applicable bond sale. Each assurance shall be released as lots are sold on a pro rata basis which shall be calculated quarterly. Thus, for example, if the construction financed by a given bond series is to

be assessed to 100 lots which are projected to be absorbed in one year, the amount of assurance for that series shall be calculated based upon the principal and interests payments which would be due during a three year period (i.e. the sale of 33 lots per year). If 40 lots have been sold as of the first quarter following the assurance for the assessments upon those 100 lots shall be posted prior to the issuance of the bonds, then 40% of the assurance shall be released at that time.

5.2.2. Assurances for Multi-Phase Assessment. The Developer shall initially post an assurance equal to three and one-half (3 ½) years' of principal and interest assessments for multi-phase MIDs. The assurance shall be released on a pro-rata basis as the project attains absorption milestones, as follows:

5.2.2.1. When twenty-five percent (25%) of the lots are sold, then the amount of the assurance shall decrease to three (3) years of principal and interest assessments on the remaining lots.

5.2.2.2. When fifty-five percent (55%) of the lots are sold, then the amount of the assurance shall decrease to two (2) years of principal and interest assessments on the remaining lots.

5.2.2.3. When seventy-five percent (75%) of the lots are sold, then the amount of the assurance shall decrease to one (1) year of principal and interest assessments on the remaining lots.

The City will retain any interest earnings but will include such earnings in determining the pro-rata reductions. The assurance may be in the form of a letter of credit, cash in an interest bearing account held by the City, or other instrument mutually agreeable to the parties.

5.2.3. Release of Assurances for MID Assessments. The Developer may obtain the release of assurances for the MID assessments prior to the time periods set forth in **Sections 5.2.1 and 5.2.2** by the sale of all or portions of the Property to successor developers or builders provided that the successor is deemed acceptable by the City, and provided further that the successor agrees to provide comparable assurances to the City. No such release shall be granted without prior approval of the successor and the comparable assurances by the City. Portions or all of the assurances may also be released in accordance with the time periods set forth in **Sections 5.2.1 and 5.2.2** by the sale of individual parcels to the ultimate purchaser and either the payment of all assessments against the individual parcel or the legal transfer of the assessment obligation to the individual property owner.

5.2.4. Phasing of MIDs. The initiation of MIDs shall be phased to coincide with the development of the Property. In the event there is a substantial change in conditions during the phasing of the development, the City reserves the right to withhold approval of any requested MID where necessary to protect the City's financial standing.

5.2.5. Compliance with Applicable Laws. The Developer agrees to provide the City with all information which the City deems necessary for the establishment, underwriting and marketing of the MID bonds, including all information which the City deems necessary to

comply with any existing or future rules and regulations adopted by the Securities and Exchange Commission which may be applicable to MID bond financing.

5.2.5.1. The Developer recognizes that this obligation may include, in the City's discretion, provision of all financial information, including continuing financial disclosures, which may be required from an "obligated person" as that term is used in Securities and Exchange Commission Rule 15c2-12, and that the City may rely upon the "Disclosure Guidelines for Land-Based Securities" prepared by the California Debt Advisory Commission for the interpretation of that rule or similar guidelines prepared for municipal governments.

5.2.5.2. The parties agree that all statutory and legal criteria for the formation of an MID must be met before the City has any obligation to establish such a district and that the parties will cooperate in meeting all such criteria.

5.2.5.3. The City's obligations under this Section shall be subject to any amendment or change to any supervening constitutional or statutory authority governing MIDs.

5.2.6. Review of Developer Status. In the event there has been any default by the Developer upon the payment of any assessment for any MID established for the Property pursuant to this agreement, any significant financial default by the Developer or any constituent person or entity, or any petition for bankruptcy protection by the Developer or any constituent person or entity, the City shall not be obligated to establish any further municipal improvement districts pursuant to this Section until the City is fully satisfied that such districts are viable and appropriate.

5.2.7. Petition to Form MIDs. The petition to form an MID must be signed by the owners of the Property, or any phase which is subject of such petition, and all persons claiming an interest in such property including, but not limited to, lien claimants, mortgage holders and the like. A master petition may be filed at any time after the Developer acquires the Property. If such master petition is signed by all owners and persons claiming an interest in the entire Property, the petition may reserve the Developer the power to request initiation of MID financing for any phase or multi-phase project. Any petition shall be treated as an amendment to this Agreement and shall be recorded as required by law and shall be notice to all subsequent purchasers from the Developer of the proposed MID, and, with respect to a master petition, the retained authority to request that the City commence MID financing.

6. Project Implementation and Management.

6.1. 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" as provided in **Section 3.2.3**. 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 6.1.1** 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.

6.1.1. Development Review Coordination Functions. The Project Manager will be responsible, among other things, for coordinating and expediting the City's review of the Developer's Master Plan amendments, 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 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, subdivision plat and plan, 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.

6.1.2. 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.

6.2. 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 Amended 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 8.7** of this Amended Development Agreement.

6.2.1. 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.

6.2.2. 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 Civano IMPACT Standards. The Revised MOU may be further amended by the parties. 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.

6.2.3. 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 7**, or the application of Future Regulations under **Section 7.3.3**, the City Manager or his designee shall resolve the matter in a manner consistent with the provisions of **Section 7.3.3** and to the extent that such resolution does not require action by the Mayor and Council of the City.

6.3. Builder Program. As provided in **Section 3.2.4** of this Agreement, in order to promote the use of the sustainability concepts demonstrated by the Civano Project throughout the community, the City will establish a Builder Program. The Builder Program is intended to provide support to developers and builders who undertake to incorporate sustainability concepts such as those embodied in the Civano IMPACT System in their projects. This support includes educational courses and materials for designers, builders and developers. In exchange for accepting the challenge of higher construction standards, designers and builders will receive substantially support in marketing these advantages. The City acknowledges that Civano would be uniquely suited for participation in any Builder Program so established, and the City will cooperate with the Developer in making resources of the Builder Program available to the Developer and to individual subdividers, developers and builders who undertake construction at Civano. The City shall also provide assistance to the Developer and to local developers and builders to increase public understanding and awareness of the uses of reclaimed and effluent water and alternative energy sources. The City intends to provide funding for the Builder Program and may seek additional funding from other sources, including but not limited to the not-for profit entity described in **Section 2.2.3** and partnering with local green building programs.

7. Protected Development Rights.

7.1. Purpose. One of the purposes of this Amended 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 Amended Development Agreement.

7.2. Protected Development Rights. The Developer shall be entitled to develop the Civano Property during the term of this Amended 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 Amended 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.

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

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

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

7.3.2.1. Supervening Authority. The Future Regulations 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.

7.3.2.2. Uniform Code Authority. The Future Regulations 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.

7.3.2.3. Threat to Public Health and Safety. The Future Regulations 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.

7.3.2.4. Administrative Fee Increases. The Future Regulations are increases in existing types or categories of fees (as contrasted with the future imposition of development fees enacted pursuant to A.R.S. § 9-463.05) applicable to the Civano Property on the Effective Date, provided any such increase is equally applicable to all areas of the City, or is applicable to the Developer in amounts no greater than similarly situated developers or builders in the City.

7.3.3. 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 7.2**, subject to the following procedures:

7.3.3.1. 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 7.3.3** 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 7.3.3** 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 Amended Development Agreement.

7.3.3.2. Resolution of Developer's Contest to Application of Future Regulation; Criteria. Upon notice to the City pursuant to **Section 7.3.3.1** above, the City shall take the following steps to resolve the Developer's objections to the application of any Future Regulation under **Section 7.3.3** by resolving the dispute pursuant to **Section 6.2** 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.

7.3.3.3. Remedies. If the City fails to establish the criteria set forth in **Section 7.3.3.2** 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.

7.3.4. 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 7.3.2 or 7.3.3**, 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.

7.4. 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.

7.5. Additional Property. Upon the mutual agreement of the parties, this Amended Development Agreement may be amended from time to time at the sole request of the Developer to incorporate into this Amended 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 Amended Development Agreement describing that Additional Property to be incorporated.

8. General Provisions.

8.1. Recitals Incorporated. The recitals set forth in **Exhibit "1"** are accepted by the parties to the Amended Development Agreement although they have no binding effect on the parties.

8.2. Exhibits. Any exhibit attached to this Amended 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 Amended Development Agreement.

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

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

8.5. Waiver of Claims. The parties acknowledge that the City and the Developer have substantially complied with the obligations and the requirements of the Original Development Agreement (as defined collectively herein) and acknowledge that neither party shall have any claim for any breach of or default under the Original Development Agreement arising out of any action or lack of action, any event or the failure to perform any duty under the Original Development Agreement that occurs before _____, 2003. This waiver shall not apply to the Developer's obligations under **Sections 3.1.7, 4.2 and 4.4** and shall not limit the rights of any parties to enforce continuing obligations under this Amended Development Agreement after _____, 2003.

8.6. Future Effect.

8.6.1. Successors and Assigns. Subject to the provisions of this Section, all of the provisions of this Amended Development Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Amended 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 Amended Development Agreement, provided:

8.6.1.1. 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

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

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

8.6.1.4. The rights and obligations set forth in **Section 3.1.5**, **Section 4** and **Section 5** shall be assignable only if expressly stated in writing with the prior approval of the City. The rights and obligations set forth in **Section 5** shall be subject to prior approval by the City of the prospective assignee(s) and shall further be contingent upon the City's determination that the assignee(s) has provided comparable financial assurances. Notice of any assignment affecting any rights or obligations set forth in **Section 5** shall be provided to the City Finance Director in addition to all other required parties.

8.6.1.5. 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.

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

8.6.1.7. 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 7** where such interest is limited to a portion of the Civano Property which is subject to the assignment.

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

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

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

8.6.3. Termination Upon Sale to Public. Except as otherwise provided in this Amended Development Agreement, the City and the Developer hereby acknowledge and agree that this Amended 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 Amended Development Agreement on the status of title to any of the Property, so long as not prohibited by law, this Amended 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 Amended Development Agreement.

8.7. Notices. All notices, requests, demands or other communications (“Notices”) required by this Amended 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:

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

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

With copies to:

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

Except as otherwise specifically stated in this Amended 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 Amended Development Agreement, which Notice shall be effective after the same is actually received by the other party.

8.8. Default; Remedies. Failure or unreasonable delay by any party to perform any term or provision of this Amended Development Agreement for a period of sixty (60) days after written notice thereof from another party shall constitute a default under this Amended 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 Amended 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.

8.9. Waiver. Except as provided in **Section 8.5**, 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 Amended 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 Amended Development Agreement.

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

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

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

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

8.14. 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.

8.15. 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.

8.16. Counterparts. This Amended 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.

8.17. Compliance with State Laws. All actions taken by the City pursuant to this Amended 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).

8.18. 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.

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

IN WITNESS WHERE OF, the parties have executed this Amended 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: _____

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

By: FANNIE MAE, its Sole Member

By: _____
Its: Authorized Officer

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:

**AMENDED AND RESTATED
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. This planning process resulted in the rezoning of the Property by the City on October 14, 1991 (the “1991 Rezoning”), and the adoption of the Master Plan 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 the Civano Advisory Committee, an advisory committee of interested business people and environmental advocates, 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. That action also directed City staff to consider development and implementation of the Builder Program to assist designers and builders in meeting sustainable development goals such as those found in the Civano IMPACT System standards. The Builder Program was implemented during the early stages of planning for the Civano Project.

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. 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, and as a condition of, 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 Amended 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 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;
- i. Clarified that the City would provide assistance to the Developer and builders in Civano through the City's Builder Program;
- 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 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 and all of its exhibits are herein incorporated by reference. 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 standards 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”), in part based on the a memorandum entitled “Principles and Conceptual Land Uses to be included within the Specific Plan,” dated May 22, 1996 (the “Land Uses Memorandum”). 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.

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. 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.

20. 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

21. Since the adoption of the Development Agreement, Civano has grown and evolved as a core 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 Amended Development Agreement, Civano has largely achieved the IMPACT System standards. Compliance monitoring for IMPACT System standards 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 standards and the MOU.

22. 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.

23. 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 standards must be considered within the financial projections. The parties herein reaffirm their commitment to strive to meet the Civano IMPACT System standards 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.

24. Likewise, the Revised MOU is needed to incorporate necessary changes to the Civano IMPACT System standards based on actual experience with the development of Neighborhood One.

25. Unforeseen delays in the development and construction of Civano in conformity with the Development Agreement and the Civano IMPACT System standards as of the date of this

Amended 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 Amended 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.

26. This Amended Development Agreement reflects the initial goals, proposals and agreements for the development of Civano, the progress that has been made in that development as of the date of this amendment and the modifications, clarifications and revisions to the initial goals, proposals and agreements as the parties have deemed necessary and appropriate.

27. The parties are entering into this Amended 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 Amended 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 Amended Development Agreement.

30. The development of the Property pursuant to this Amended 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 Amended 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).