

## AMENDED INDEMNITY AGREEMENT

This AMENDED INDEMNITY AGREEMENT (the “Amended Indemnity Agreement”) dated ~~October 20, 1997~~, 200, is entered into by the CITY OF TUCSON, an Arizona municipal corporation (the “City”) and by THE COMMUNITY OF CIVANO, LLC, an Arizona limited liability company ~~and CASE ENTERPRISES DEVELOPMENT CORPORATION, a Connecticut corporation, which are collectively referred to herein as~~ (the “Developer” or “COC”).

### RECITALS

A. WHEREAS, The City entered into a Development Agreement (the “Development Agreement”) ~~dated July 1, 1996, for reference purposes~~, with private developers, which included the Trust for Sustainable Development [Arizona], Inc., an Arizona corporation (“TSD”), Investors for Sustainable Development [Civano], LLC, an Arizona limited liability company (“ISD”), and Case Enterprises Development Corporation, a Connecticut corporation (~~“Case Enterprises”~~) ~~which is recorded in~~ (collectively, the “Original Developers”) authorized by Resolution No. 17345 adopted on July 1, 1996, and recorded at Docket 10333, Page 1109 of the Pima County ~~Recorder; and~~ Records, with an effective date of November 19, 1996 (the “Effective Date”).

B. The Development Agreement applies to that certain former state trust land, located east of Houghton Road and southwest of the Pantano River as described in the Development Agreement (the “Civano Property”).

C. WHEREAS, The Development Agreement was ~~subsequently amended by Amendment No. 1 to the Development Agreement on June 23, 1997, to add~~ modified by several amendments, an addendum and a clarification, which in part added The Community of Civano, LLC ~~as a party to the Development Agreement and as a “Developer” and to make additional amendments;~~ and ~~WHEREAS~~, an Arizona limited liability company, and removed TSD and ISD as developers thereunder. The Development Agreement was further amended ~~on October 20, 1997, upon agreement of the parties; and~~ and restated by an “Amended and Restated Civano Development Agreement” between the City and the Developer that removes Case as a developer, leaving COC as the current Developer of the Civano Property (the “Amended Development Agreement”).

D. WHEREAS, Pursuant to the Development Agreement ~~as amended provides that~~, the City originally agreed to undertake the construction of certain infrastructure ~~construction~~ improvements (“Infrastructure Improvements”) prior to and in phases with the ~~Developer’s~~ construction of dwellings ~~and provides that the Developer shall complete certain development after the expenditure of City funds;~~ and at Civano at no cost to the Developer and at a total cost not to exceed \$3,000,000.

~~E. WHEREAS, the Development Agreement requires that the Developer provide~~In exchange, the Original Developers agreed to dedicate to the City all necessary rights-of-way and easements for the Infrastructure Improvements and to execute and deliver an agreement to the City prior to the commencement of construction on the Civano Property ~~which will~~to indemnify the City for infrastructure expenses in the event certain stated construction requirements are not completed; ~~and, The City, Case and COC entered into an indemnification agreement authorized by Resolution No. 17836 adopted on October 20, 1997, and recorded at Docket 10656, Page 450 of the Pima County Records (the “Original Indemnity Agreement”).~~

~~F. WHEREAS, the Development Agreement as amended provides consideration for this Indemnity Agreement,~~

G. The Original Indemnity Agreement provided *inter alia* that Case and COC would indemnify and agree to fully reimburse the City for all expenditures actually made by the City for Infrastructure Improvements as defined by the Development Agreement (as amended) in the event that construction of 1,250 dwelling units was not completed by February 1, 2008.

H. The City asserts it has completed its share of the Infrastructure Improvements by constructing an extension of the existing sewer line from its terminus outside of the Civano Property and south of the Pantano Wash to a point on the Civano Property which connects to the sewer lines constructed on the Civano Property.

I. COC asserts that all the necessary rights-of-way and easements for the Infrastructure Improvements have been dedicated to the City and that development of the Civano Property has been initiated and is substantially underway.

J. Development of the sewer lines satisfying the “Sewer Requirements” of Section 4.4.1 of the Development Agreement (as amended) has been completed and each line has been accepted by Pima County into its sewer system for continuous maintenance, generally described as:

1. 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.

2. 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.

3. 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.

4. 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.

K. The eastern sewer interceptor 1, the eastern sewer interceptor 2 and the southern sewer line (collectively the "Sewer Improvements") are oversized to provide for additional sewer capacity for connection to developments outside of the Civano Property. For example, the eastern sewer interceptor 1 and the eastern sewer interceptor 2 extend east of the Civano Property and provide sewer service connections to the State and private lands located east of the Civano Property. Likewise, the southern sewer line extends south of the Civano Property and provides sewer service connection to the State and private lands located south of the Civano Property.

L. Development and sale of residential lots at the Civano Property has been slower than the parties expected at the time the Original Indemnity Agreement was executed. As of \_\_\_\_\_, 2003, over \_\_\_\_\_ dwelling units have been developed and sold, and another \_\_\_\_\_ residential lots have been developed and are being marketed.

M. To reflect the completion of improvements to the Civano Property and the surrounding community and the Developer's experience in developing the Civano Property since October 20, 1997, the City and the Developer agree to execute this Amended Indemnity Agreement that shall supercede the Original Indemnity Agreement in its entirety.

NOW, THEREFORE, the City and the Developer agree as follows:

1. Substantiated Expenditures. The City will provide documentation acceptable to the ~~Community of Civano and Case Development Enterprises, which are collectively defined as the Developer in the Development Agreement as amended indemnify and agree to fully reimburse the City for all~~ Developer substantiating the expenditures actually made by the City for the Infrastructure Improvements as ~~described by in~~ the Development Agreement ~~as amended in the event that the Developer and its successors and assigns do not complete construction of 1250 dwelling units by February 1, 2008.~~ and the Amended Development Agreement (the "Substantiated Expenditures").

2. Reimbursement. The Developer will continue development of the Civano Property until a minimum of 1,250 dwelling units have been constructed on the Civano Property or until April 1, 2012. In the event that 1,250 dwelling units (including all units constructed on the Civano Property as of the date of

this Amended Indemnity Agreement) are not constructed as of April 1, 2012, the Developer shall reimburse the City for the Substantiated Expenditures made by the City for the Infrastructure Improvements in an amount equivalent to the percentage of the 1,250 dwelling units remaining to be constructed as of April 1, 2012.

Notwithstanding the foregoing, the Developer's obligation to continue development of the Civano Property will terminate at the earlier of the construction of 1,250 dwelling units or April 1, 2012.

3. Non-Recourse. The indemnities provided in this Amended Indemnity Agreement shall be enforceable only as against the Developer, and the City shall not seek recourse against the individual members, managers, managers of a member(s), partners, shareholders, directors, officers, employees or agents of the Developer or any individual, member of a joint venture, tenancy in common, firm or partnership, general or limited, which may be the Developer. It is mutually agreed that this provision is and shall be considered an integral part of this Amended Indemnity Agreement.

4. ~~2.~~ Costs and Fees. The Developer further agrees to pay to the City all costs, fees and reasonable ~~attorneys~~attorney's fees ~~which~~that may be necessary to enforce this Amended Indemnity Agreement.

5. Successors and Assigns. All of the provisions of this Amended Indemnity Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Amended Indemnity 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 Indemnity Agreement in accordance with the assignment provisions of the Development Agreement and the Amended Development Agreement, whereupon the Developer shall be released from liability hereunder and the City shall look solely to such successors or assigns for performance and payment hereunder.

6. Amendments. All amendments to this Amended Indemnity Agreement shall be in writing and, if approved, must be signed by all appropriate parties.

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

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

9. Notices. All notices, requests, demands or other communications (“Notices”) required by this Amended Indemnity 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, 9<sup>th</sup> 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, 7<sup>th</sup> Floor  
P.O. Box 27210  
255 West Alameda  
Tucson, Arizona 85726-7210

If to Developer:

The Community of Civano LLC  
c/o Judith L. Kilroy  
3900 Wisconsin Avenue NW  
8H-306  
Washington, D.C. 20016-2892

Thomas Dolan, Esq.  
Fannie Mae  
3900 Wisconsin Avenue NW  
8H-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 Indemnity 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 Indemnity Agreement, which Notice shall be effective after the same is actually received by the other party.

10. Entire Agreement. This Amended Indemnity Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understanding of the parties, oral or written, are hereby superseded and merged herein.

11. Headings and Recitals. The descriptive headings of the sections of this Amended Indemnity Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. The Recitals set forth at the beginning of this Amended Indemnity Agreement are hereby acknowledged and incorporated herein and the parties hereby confirm the accuracy thereof.

12. No Third Party Beneficiaries. It is not intended by this Amended Indemnity Agreement to, and nothing contained in this Amended Indemnity Agreement shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

13. Counterparts. This Amended Indemnity 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.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Amended  
Indemnity 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

~~Date: \_\_\_\_\_~~

~~CASE ENTERPRISES DEVELOPMENT  
CORPORATION,  
a Connecticut corporation~~

Dated: \_\_\_\_\_

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

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

Its: Authorized ~~Officer~~

~~Dated:~~ \_\_\_\_\_

~~THE COMMUNITY OF CIVANO, LLC~~

~~By Case Enterprises Development~~

~~Corporation~~

~~Its Manager~~ Representative

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

Its: \_\_\_\_\_ Authorized Officer

Dated: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ ) ss.

County of \_\_\_\_\_

~~STATE OF ARIZONA~~ \_\_\_\_\_ )

\_\_\_\_\_ ) ~~ss.~~

~~County of Pima~~ \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199200 -, by \_\_\_\_\_, ~~Mayor, City of Tucson~~, the Authorized Representative of The Community of Civano, LLC, an Arizona limited liability company.

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

My Commission Expires:

\_\_\_\_\_

~~STATE OF ARIZONA~~ \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.  
~~County of Pima~~ \_\_\_\_\_ )

~~The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 1997, by \_\_\_\_\_, authorized officer of Case Enterprises Development Corporation, a Connecticut corporation.~~

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

~~My Commission expires:~~

~~\_\_\_\_\_~~

~~STATE OF ARIZONA~~ \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.  
~~County of Pima~~ \_\_\_\_\_ )

~~The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 1997, by \_\_\_\_\_, authorized officer of Case Enterprises Development Corporation, the manager of The Community of Civano, LLC, an Arizona limited liability company.~~

~~\_\_\_\_\_~~

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

~~My Commission expires:~~

~~\_\_\_\_\_~~