

**CIVANO IMPACT SYSTEM
REVISED MEMORANDUM OF UNDERSTANDING
ON IMPLEMENTATION AND MONITORING PROCESS**

December 8, 2003

4 JUN 03 09:00 AM

CIVANO IMPACT SYSTEM**REVISED MEMORANDUM OF UNDERSTANDING
ON IMPLEMENTATION AND MONITORING PROCESS**

December 8, 2003

The parties to this Revised Memorandum of Understanding (the "Revised MOU") are the City of Tucson (the "City") and The Community of Civano, LLC (the "Developer"), Case Enterprises Development Corporation, a Connecticut Corporation (Case), and Pulte Homes, Inc., a Michigan corporation (Pulte Homes) collectively the "Developer" or "Developers"). The Community of Civano, LLC was the master developer for the initial development of Civano. The City and the Developers entered into the Revised Civano Development Agreement on December 8, 2003, which established Pulte Homes as the Master Developer. The terms and definitions in the Revised Civano Development Agreement apply to this Revised Memorandum of Understanding (the "Revised MOU").

1.0 GOAL

The goal of the Civano project is to create a mixed-use community that attains the highest feasible standards of sustainability, resource conservation and development of Arizona's most abundant energy resource – solar – so that it becomes an international model for sustainable growth. The State of Arizona through the Department of Commerce, Energy Office provided significant financial support for the early planning and design of Civano. This funding was provided at Civano's inception explicitly in support of the demonstration of the use of solar energy as a guiding, organizing principle of community development.

Another major goal of Civano is to foster creativity and innovation in the construction of Civano. Establishing clear performance achievement levels and then allowing the Developer, designers and builders flexibility in the method of achieving the standards best advances this goal.

The sustainable growth objectives of Civano have been amplified and expanded in the Civano Neighborhood 1 Planned Area Development, adopted by City Ordinance No. 8970 dated October 20, 1997, as revised on October 12, 1998, and subsequently renewed (the "Neighborhood 1 PAD"), to include the goals of Building Community, Connection with the Land, Respect for Climate and Regeneration.

The goal of the this Revised MOU is to confirm the strategies for sustainable development, energy conservation, and economic feasibility of the design and technologies used to implement and monitor the resource conservation and other project goals set forth in the Civano IMPACT System adopted on October 2, 1995 (the "IMPACT System"), as refined in the Revised and Restated Civano IMPACT System adopted on December 8, 2003 (the "Revised IMPACT System"), all of which contribute to the basis of the Civano Project. The IMPACT System and Revised

11/22/03 11:21:21

IMPACT System establish baseline standards, "Performance Targets" and "Specific Requirements" to achieve the resource conservation and other project goals.

2.0 BACKGROUND

The City, in cooperation with the Arizona State Land Department ("ASLD"), the Metropolitan Energy Commission, and with significant input from the public, established the general development guidelines for Civano in 1991. These were implemented through a planning process, the adoption of conditions upon the sale of the state trust land (the "State Land Patent Conditions"), and conditions adopted as part of the rezoning of the property by the City under Ordinance No. 7697, dated October 7, 1991, amended by Ordinance No. 8971 dated October 20, 1997 (the "Rezoning Conditions"), and as further amended by the adopted of the Neighborhood 1 PAD. These conditions included resource and energy conservation targets as well as community planning targets such as preservation of open space, and encouraging a greater mix of uses.

The City adopted the IMPACT System to define and administer the resource conservation goals and to maintain Civano's position on the leading edge of sustainable development. The IMPACT System and Revised IMPACT System as adopted (and as may be subsequently amended) clarify the City's policies and requirements for the Civano Project:

CITY OF TUCSON GUIDELINES FOR DEVELOPERS AND BUILDERS: THE IMPACT SYSTEM (Integrated Method of Performance and Cost Tracking)

The IMPACT System is a means of organizing resource efficiency goals and stakeholder cooperation for sustainable community development and for measuring progress toward those goals over time. It is intended to be a cyclical process that:

- Is grounded on metropolitan Tucson baseline conditions that are normally documented and periodically updated by community organizations.
- Is responsive to community policy priorities that will change over time.
- Uses performance targets and specific requirements that exceed baseline conditions without detrimental cost penalties.

- Uses collaboration among stakeholders to reach common goals.
- Measures development performance and costs to evaluate target achievement.
- Enables revisions as baseline conditions improve, and as new targets become technically and economically feasible.

* * * * *

While the initial responsibility for meeting the Revised IMPACT System Standards will lie with the Developer and the builders, responsibility for administering the Revised IMPACT System over time will lie principally with CCA. The CCA is the non-profit corporation created pursuant to the Amended Covenants, Conditions, and Restrictions for Civano: The Tucson Solar Village, recorded November 21, 1998, at Docket 10915, Page 639 of the Pima County Records (the "Civano CC&Rs") for the purpose of administering the CC&Rs, as described in the Civano Master Plan, adopted by ASLD on March 5, 1992, as amended by City Ordinance No. 8971, dated October 20, 1997 (the "Master Plan"). The CCA membership will include all owners of property within Civano.

* * * * *

The IMPACT System clarifies the Rezoning Conditions and will guide the City's review of subdivision and development plans and initial building permit applications.

* * * * *

The City of Tucson is committed to achieving the original performance targets for Civano over time and does not intend to accept lower performance levels in the initial Memoranda of Understanding.

* * * * *

The IMPACT System established baseline standards and "Performance Targets" and "Specific Requirements" to achieve the conservation and sustainability goals. These Performance Targets and Specific Requirements are collectively referred to as the "IMPACT System Standards."

The City subsequently entered into the Civano Development Agreement (the "Development Agreement") in July 1996 to reaffirm the goals and principles of Civano to provide the framework for cooperation between the City and the Developer in the development of Civano. The Development Agreement required the parties to negotiate a Memorandum of Understanding to address the implementation and

monitoring aspects of the IMPACT System Standards that underpin the Development Agreement.

The City and the Developer have subsequently entered into the Revised Development Agreement to reflect the initial goals, proposals and agreements for Civano, the progress made over time, and the modifications, clarifications and revisions to the initial goals, proposals and agreements as the parties have deemed necessary and appropriate. The implementation and monitoring responsibilities described in this Revised MOU update, clarify and supplement those in the original MOU and IMPACT System and parallel the changes in the Revised Development Agreement.

The Neighborhood 1 PAD was adopted by the Mayor and Council to further guide the initial development. The Neighborhood 1 PAD, along with the original and Revised Development Agreement, the Rezoning Conditions and State Land Patent Conditions, provide the framework for developing Civano as a leading sustainable development.

The parties recognize that implementation of the IMPACT System Standards and achievement of the Civano Performance Targets will require a multifaceted approach. While some of the Performance Targets are appropriately addressed by compliance with Specific Requirements for planning, development and construction phases. Other Performance Targets are necessarily dependent upon the actions and conduct of future residents of Civano and must be assessed over time. Initially implementation of the Specific Requirements will involve the review and certification of compliance by the City and by the Developer.

As Civano develops it is anticipated that the parties will have additional information from advances in technology, and the monitoring of the implementation of the Revised IMPACT System may affect future implementation strategies, requirements and methodologies. It is also anticipated that as Civano develops, the residents will begin to actively participate in the shaping and implementation of the Performance Targets and Revised IMPACT System through their actions and through the CCA.

3.0 OUTLINE OF PROCESS

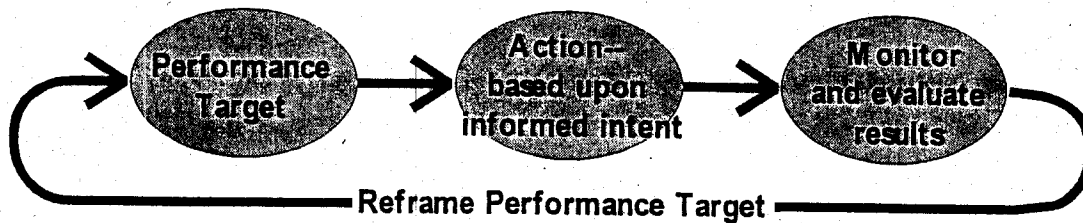
3.1. Sustainable Development as a Process

The term "sustainable development" has been defined as "a process of change in which the use of resources, the direction of investment, the orientation of technological development, and institutional change all enhance potential to meet human needs both today and tomorrow."¹

Conceptually, the IMPACT System Standards are the measuring sticks on which all actions are based and by which performance will be measured. In addition to meeting Specific Requirements and moving toward achievement of all the established

¹ Sustainable Development: A Guide to Our Common Future, United Nations World Commission on Environment and Development. 1987.

Performance Targets, performance must include success in the marketplace. It is understood that the success of Civano will require the good faith commitment and diligent actions by all parties concerned. This approach requires an integrated, flexible response to meet the mandated targets and requirements. This process will be supported and documented by continued monitoring and evaluation of its effectiveness.



3.2. Relationship of Plan Review to Monitoring and Evaluation

The underlying principle, as outlined above, is that compliance with the performance targets as described herein will be demonstrated by the construction and subsequent use of site improvements and the development of related programs. Buildings, site improvements, and related programs will be designed to meet or exceed the IMPACT Systems Standards. The Developers and individual builders cannot be sanctioned, however, if actual performance does not meet standards where the personal behavior of occupants affects how buildings function. Plan review will insure that, in accordance with Section 7, initial development and construction meets Specific Requirements applicable at that stage. Subsequent monitoring of performance in accordance with this Revised MOU will provide the basis for determining the success in meeting the Revised IMPACT System Standards as well as the basis for improving future conservation and sustainability strategies and standards.

3.3. Impact System Evaluation Committee Established

An IMPACT System Evaluation Committee (the "Civano IMPACT Committee") is hereby established to include a minimum of one representative of the Master Developer, one representative designated by the City Manager who will serve as the Project Manager and one CCA representative selected by the CCA. Commencing January 1, 1999, the Civano IMPACT Committee will meet at least every six months to review the Revised IMPACT System Monitoring Reports to track progress and compliance with the Revised IMPACT System Standards, identify issues of concern, and seek solutions to problems encountered, all in a manner consistent with the success of the Civano Project.

The parties shall further seek the cooperation of the University of Arizona, the State of Arizona Department of Commerce, Energy Office, Tucson Electric Power, other utility companies, energy providers, environmental experts, environmental engineers and similar independent agencies for the monitoring, evaluation and proposed

revisions of the baselines and Revised IMPACT System Standards, status of Civano compliance to date and strategies for improved implementation of the Revised IMPACT System.

3.4. The IMPACT System Monitoring Report

The IMPACT System Monitoring Report ("Monitoring Report") shall be a public status report prepared by the Master Developer to document the success of Civano in achieving the Revised IMPACT System Standards, supplemented with related information from the City and publicly available information concerning the resource conservation baselines and Performance Targets. The Monitoring Reports shall be submitted as described in the Revised Development Agreement.

Following is a format for the Monitoring Report which includes not only progress toward meeting the Performance Targets, but also is designed to provide information for public policy changes which would support greater resource conservation and sustainable development. The Monitoring Report will also provide general public information relative to the Civano community development process and progress. It shall include the following information with supporting data submitted by the Developer:

- 3.4.1. Overall goals, objectives and strategies, including builder and buyer education for resource conservation practices consistent with the IMPACT System Standards.
- 3.4.2. Site layout, showing the built development to date, in relation to the overall plans for development.
- 3.4.3. Description of anticipated near-term projects.
- 3.4.4. Projected timetables and milestones for completion of anticipated projects.
- 3.4.5. Status of building and occupancy relative to parking (Parking Inventory and Monitoring Program), pedestrian ways, and landscaping (conceptual planning framework).
- 3.4.6. Progress to date, and recommended strategies, toward meeting baseline IMPACT System Standards in the following areas:
 - reducing fossil-fuel energy use from gas, electricity and gasoline;
 - developing solar energy resources;
 - reducing potable water usage;
 - reducing building wastes;

- reducing solid wastes;
- reducing auto travel and resultant air pollution;
- creating a balance of jobs and housing;
- creating affordable housing, meeting needs of on-site working population; and
- demonstrating the economic feasibility of resource conservation and sustainable development as a model for growth in Civano.

3.4.7. Resulting linkages to central and inner city redevelopment.

The City will provide supplemental information to be attached to the Monitoring Report which includes a status report on progress toward meeting the City's strategies and responsibilities enumerated in this Revised MOU.

The form of the Monitoring Report will be written, with appropriate graphics, for wide distribution.

3.5. Periodic Review

Commencing two (2) months after the initial Monitoring Report and continuing thereafter as described in the Revised Development Agreement, the City and the Civano IMPACT Committee shall consider whether any amendments to this Revised MOU are necessary to achieve the maximum practical compliance with the Revised IMPACT System Standards. This shall include review of the baselines established in the Revised IMPACT System, the methods of monitoring and establishing compliance, the strategies and Specific Requirements which are appropriate to achieve compliance, the integration of new technology and other matters which are appropriate to maintaining the role of Civano as a leading demonstration of resource conservation and sustainability. Where it is determined that an amendment to this Revised MOU is appropriate, the parties shall proceed in accordance with Section 8 herein.

4.0 JOINT CITY AND COMMUNITY OF CIVANO STRATEGIES AND RESPONSIBILITIES

4.1. Description of Joint Strategies and Responsibilities

In recognition of the need for cooperation in achieving the goals described in the Revised IMPACT System, as may be revised from time to time, and this Revised MOU, the City and the Developer understand that the following strategies and responsibilities are important to the success of Civano as a sustainable community:

- 4.1.1. Building plans, development plans, specific plans and similar requests will be prepared, submitted and reviewed in a timely and complete manner.
- 4.1.2. The Civano Model Energy Code/Tucson Sustainable Energy Standard will be reviewed and considered by the City and the Developer for periodic updating as new or improved technologies become available.
- 4.1.3. The parties will explore with the Arizona Department of Commerce, Energy Office and other appropriate agencies, the initiation of programs to further encourage, develop, use, and monitor the beneficial applications of solar energy.
- 4.1.4. Grant funding should be pursued to undertake studies and analysis of the role of landscaping and coloration in building and paving cooling strategies.
- 4.1.5. Street standards will be reviewed to determine the appropriate methods to significantly reduce the "urban heat island" effect, including the effect of reducing paved surfaces, integrating landscaping for shading of pedestrian, bicycle and automobile parking areas, and allowing alternative, less heat-absorbing paved surfaces in a manner consistent with public safety and handicapped accessibility requirements.
- 4.1.6. The parties will cooperate on demonstration projects involving the private and public uses of developing technology; e.g., solar photovoltaic powering of residential homes and of on-site municipal streetlights or pumps, including pursuing grants and other funding for renewable technology demonstration projects.
- 4.1.7. The parties will explore the installation of filtration systems for reclaimed water to meet ADEQ standards for full body contact and to permit use of reclaimed water for vegetables to be consumed raw. The parties shall further explore obtaining the adoption of any necessary revisions to existing standards to permit these uses.
- 4.1.8. The parties will cooperate to designate and provide garbage and recycling pick-up to all uses, including multifamily and commercial, in conformance with City plans and designs incorporated in the Neighborhood 1 PAD and development plans.
- 4.1.9. The City will consider the designation of the proposed Civano recycling center as a "neighborhood recycling center" within the City's overall program.

11/22/03 11:22:03

- 4.1.10. The parties will explore the use of Civano as a pilot site for demonstrating new programs and advanced recycling and composting techniques.
- 4.1.11. The parties will cooperate to formulate an overall solid waste plan for Civano particularly as it relates to waste reduction and diversion goals.
- 4.1.12. The parties will cooperate to develop a transit plan for Civano and the surrounding area, including exploring with the State of Arizona Department of Transportation, the City's Department of Transportation and other affected property owners, a transportation corridor plan for Houghton Road.
- 4.1.13. The parties will cooperate with the Greater Tucson Economic Council and other agencies to actively recruit employers for location in Civano.
- 4.1.14. The City will consider land-use designations in the vicinity of Civano that incorporate mixed uses, complement Civano, and encourage sustainable development.
- 4.1.15. The parties will explore programs to provide assistance to developers/builders who participate in low and moderate-income housing programs.
- 4.1.16. The parties will explore the application of the landscape and xeriscape requirements set forth in the City's Land Use Code, Section 3.7.2 to all uses in Civano and to all lot areas consistent with the goals of the Master Plan and will further explore the integration of personal and community gardens, orchards and food producing landscaping into these requirements.
- 4.1.17. The parties will cooperate to develop a plan for the Pantano Riverpark which integrates adjacent planned open space and recreation areas in Civano.
- 4.1.18. The parties will cooperate to develop standards which more effectively utilize natural drainage areas and private open space areas for water harvesting and retention, in order to encourage native plant growth, recharge aquifers and reduce the magnitude of flood flows and erosion hazards.
- 4.1.19. The parties will cooperate in a manner consistent with the Revised IMPACT System and the Revised Development Agreement to achieve the goals of this Revised MOU.

5.0 SPECIFIC PROCEDURES FOR IMPLEMENTATION

5.1. Master Developer Requirements Prior to Issuance of Residential Building Permits

The Master Developer shall:

- 5.1.1. Maintain Development Design Guidelines (the "Design Guidelines") (as they may be amended) to assure that provisions are made to meet the Revised IMPACT System Standards. The CCA may, in coordination with the Master Developer, amend the Design Guidelines in accordance with the CCA governing documents.
- 5.1.2. Maintain the Certification Committee as a part of the Design Review Committee ("DRC") (as provided in the Civano CC&Rs). The Certification Committee shall include a DRC representative, a licensed architect, or a licensed engineer, and a CCA representative.
- 5.1.3. Establish exterior water budgets, monitor water consumption, and develop a contingency program to achieve compliance with the budgets if water conservation targets are not met. Utilize City-provided reclaimed water in landscaping for common areas and non-residential uses, and provide rainwater harvesting, graywater systems, or other alternative irrigation systems not dependent on potable water in residential uses.
- 5.1.4. Establish provisions for utilizing non-potable water for all outdoor irrigation systems and for utilizing efficient and effective, non-pooling drip irrigation systems for all landscaping. This provision shall not require the use of reclaimed water in gardens for the production of raw vegetables for human consumption unless such use is approved by the State of Arizona.
- 5.1.5. Establish interior water budgets, monitor water consumption and develop a contingency program to advance compliance with the budgets if water consumption targets are not met for each building, and design the plumbing systems accordingly that will reduce the interior use of water in residential structures to 53 gallons per person per day and to 15 gallons per person per day in non-residential structures. The guidelines shall specify the manner in which water use has been calculated and the principal measures to be taken to meet these budgets.

5.2. Area Planning, Subdivision and Planned Area Development Review

Certain requirements apply to development in a broader context than the specifications for a single structure or lot or a specific point in time. These must be reviewed with consideration for the progress in existing development as well as the

prospective development as set forth in the Master Plan. City development decisions on the Civano project, which will be viewed in this broader context, are rezonings, planned area developments ("PADs"), specific plans, subdivision plats, development plans and amendments thereto, not including plans applicable to a single family lot. Interpretation of compliance with these requirements shall be analyzed in the same manner in which the Tucson General Plan, existing area plans and neighborhood plans are applied to prospective development. Any dispute regarding these interpretations may be resolved pursuant to Section 5.4.

General planning areas, not including plans applicable to a single family residential lot, such as development plans, subdivision plats, rezonings and PADs shall be designed to meet the following Revised IMPACT System Standards, as applicable for the scale of the project, in addition to all other applicable code requirements. The City shall review all such plans in accordance with Section 7. Compliance shall be consistent with the Master Plan and may take into account future development as provided for in the Master Plan.

Monitoring Reports that document compliance with the Revised IMPACT System shall be prima facie evidence of prior compliance. Any dispute regarding these interpretations may be resolved pursuant to Section 5.4.

- 5.2.1. Land may be designated and set aside by the Developer for the design and construction of demonstration projects, as more fully described in Section 6.0, which are compatible with the technologies being offered by Civano.
- 5.2.2. Site design and grading plans shall limit site clearance on residential lots to preserve existing desert vegetation and maximize natural drainage in a manner consistent with the grading plans approved with the Master Plan and any approved PAD or specific plan. The exact requirement for preservation of existing desert vegetation shall be determined after completion of drainage and engineering studies.
- 5.2.3. Location of a community pool to be constructed early in the development of each phase or neighborhood (as those terms are used in the Master Plan) by the Developer and/or individual builders in an attempt to discourage construction of private pools.
- 5.2.4. Inclusion of commercial services and other mixed uses with residential developments, consistent with the adopted Master Plan and subsequently-adopted PADs or specific plans, to provide access from residences to commercial or employment areas by walking, bicycling or similar alternatives to automobile use.
- 5.2.5. Provision of a central location for access to city bus routes or alternative transit shuttle services, consistent with the adopted Master

Plan and subsequently adopted PADs or specific plans. Consideration by the City and SunTran of the extension of bus routes to Civano during the development of each Phase or Neighborhood or, as one of several possible alternatives, a shuttle service to the nearest Sun Tran express route and/or park and ride lot.

- 5.2.6. Provision of a pedestrian and bicycle-built environment, which is consistent with the requirements to provide access to disabled persons. Each development phase will provide for a majority of through streets (versus cul-de-sacs), construction of a system of sidewalks or bike or multi-purpose paths and nonresidential uses which have orientation access and emphasis on pedestrian /bicycle linkages rather than auto linkages.
- 5.2.7. Provision for recyclable materials pick-up areas consistent with requirements of the City Solid Waste Department.
- 5.2.8. Provision of a minimum ratio of 300 square feet of non-residential floor area for every two dwelling units constructed. This requirement may be determined based upon the full development of Civano in accordance with the Revised Development Agreement and Revised IMPACT System standards.
- 5.2.9. Design of telecommunications capacity to enable the expansion of fiber optics or similar infrastructure to all commercial and home office locations. This may be met by providing conduit capability during construction.
- 5.2.10. Identification of the provision for 20% of the dwellings to meet the goal for affordable housing as defined in the IMPACT System Standards to the extent that assistance is available from public agencies, foundations, and other sources to finance and construct affordable housing. The construction of affordable housing shall be reasonably uniform throughout the development of Civano. The Civano development as a whole shall approximately conform with the 20% requirement at the time 500 residential dwelling units have been constructed, at the time 1,000 dwelling units have been constructed, at the time 1,250 dwelling units have been constructed, and at full buildout of Civano.
- 5.2.11. Extension of reclaimed water lines to all common areas and nonresidential uses. Builders of residential units will provide reclaimed water, or rainwater harvesting, or graywater, or other alternative irrigation system to unit buyers. Exposed hose bibs for reclaimed water shall be discouraged and if used shall be clearly identified prior to sale of the property.

5.2.12. Functioning systems using reclaimed water, graywater or rainwater harvesting or other alternative irrigation system not dependent on potable water shall be provided for all landscape irrigation except that:

5.2.13.1 the limited use of potable water for personal and community gardens producing vegetables to be consumed raw will be allowed within the overall landscape design until it is determined that such use of non-potable water is safe.

5.2.13.2 potable water may be used for temporary and periodic flushing of the reclaimed system if necessary to assure efficient operation of irrigation systems, upon notification to and consent by the City, which consent shall not be unreasonably withheld.

5.2.13. All landscaping which is required for public streets adjacent to residential properties shall be limited to drought tolerant plants as established by City Development Services.

5.3. Building Plan Requirements and Review

All plan submittals for building permits shall be determined in accordance with Section 7 to meet the following requirements in addition to all other applicable codes.

5.3.1. All building permit applications shall be certified in accordance with Section 7.0 as complying with the following:

5.3.1.1 Residential building plans shall provide a certification that the plans as submitted provide for a total energy use through the building shell, heating and cooling systems ("building energy use") of at least a 65% reduction for each dwelling from the 1990 Model Energy Code annual energy use baseline, equivalent to a 50% reduction from the 1995 Model Energy Code annual energy use baseline, commencing at the time of initial residential occupancy. The certification shall be in the form attached hereto as Exhibit 2.

5.3.1.2 Non-residential building permits shall provide a certification that the plans as submitted provide for a total energy use through the building shell, heating and cooling systems ("building energy use") of at least a 55% reduction for each structure from the annual energy use by a comparable non-residential structure in 1990 as established by the Model Energy Code. The certification shall identify the 1990 level used, the method of determining that level and the source material documenting that level. The energy conservation

shall commence at the time of initial occupancy. The certification shall be in the form attached hereto as Exhibit 2.

- 5.3.1.3 Building plans shall identify the manner in which the proposed structures will be designed for the use of solar energy through the orientation for passive heating and cooling purposes, consistent with Civano's goals.
- 5.3.1.4 Plans shall incorporate some beneficial use of solar energy to reduce the energy demands from heating, cooling and interior water heating. Solar devices such as currently found in A.R.S. § 44-1761 shall qualify as beneficial uses of solar energy will satisfy this requirement.
- 5.3.1.5 Landscape and hardscape coloration and/or vegetation shall be used to reduce the microclimate temperature adjacent to the structures. The average reflectivity of all major landscape and hardscape surfaces must be 0.5 or greater on the albedo scale or result in equivalent energy savings.
- 5.3.1.6 Describe a program that identifies procedures for preserving construction materials for recycling during construction and for the use of recycled construction materials in construction.
- 5.3.2. Structural calculations demonstrating that the roof will support solar photovoltaic, solar thermal power generation and solar water heating systems of sufficient size for the potential uses of the building.
- 5.3.3. Location and installation of plumbing stubouts for solar hot water heaters shall be required and shown on all residential and commercial buildings.
- 5.3.4. All structures shall be constructed so that there is minimal obstruction of solar light for adjacent properties at the level of a roof of a single story building (fifteen (15) feet) constructed at the legally permitted set back from the property line.
- 5.3.5. Where reclaimed water, graywater, or other alternative irrigation systems are to be installed, two water supply systems shall be shown: one for potable water and one for reclaimed or other non-potable water for landscaping or similar external uses. Provisions may be made for rainwater harvesting and/or graywater use for landscaping in conformance with existing codes.

- 5.3.6. Non-residential space conditioning system cooling towers rated at one hundred tons or more of cooling capacity shall comply with ADWR water conservation requirements.
- 5.3.7. Solar thermal water heaters or other devices or technologies which achieve equivalent energy savings in the heating of hot water shall be included on all model homes for demonstration purposes and as options on all other homes.
- 5.3.8. Plans shall provide for built-in recyclable separation features and storage of hazardous materials.
- 5.3.9 plans for each structure shall identify some recycled material used in the construction of the structure.
- 5.3.10 All structures shall minimally comply with the Civano Model Energy Code/Sustainable Energy Standard as adopted and as it may be amended.

5.4. Expedited Review of Interpretations

The City will establish a review committee for the resolution of all interpretive or technical disputes in accordance with Section 6.2.1 of the Revised Development Agreement (the "Interpretive Review Committee"). The Developer or the City may submit any matter to this Interpretive Review Committee for a determination as to whether the matter is one of interpretation or whether there exists an established requirement which is subject to an established administrative appeal procedure. Where the matter is one of interpretation, the Interpretive Review Committee shall determine the interpretation to be applied. The Interpretive Review Committee shall consist of a designee of the City Manager, a designee of the City Attorney's office and a designee of the director of the department or departments which is/are responsible for the review and/or enforcement of the matter being submitted. The Interpretive Review Committee shall reach a decision on the matter or shall state the reason why a decision cannot be made within five working days of the submission. The Developer may appeal (a) any such decision or (b) the Interpretive Review Committee's failure to reach a decision within five working days to the City Manager pursuant to Section 6.2 of the Revised Development Agreement. The Developer agrees to comply with any decision that is not appealed to the City Manager within five working days of the decision.

6.0 DEMONSTRATION PROJECTS

The parties recognize that development of innovative designs and technologies for resource conservation and use of solar energy are important goals of Civano. In order to encourage such innovation, the Developer may set aside a limited number of residential or commercial lots for construction of demonstration buildings. Such

142326.1

buildings shall not be subject to the requirements of Sections 5.2 and 5.3 at the time of initial planning or permit review but shall provide descriptions of the manner in which these requirements will be met. Such designated structures shall be reviewed after one year for compliance with the resource conservation requirements of the Revised IMPACT System. The buildings shall not be sold or otherwise conveyed to private parties other than the Developer, unless such buildings are certified as set forth in Section 7 to comply with the resource conservation requirements of the Revised IMPACT System Standards and the requirements of Section 5.3. Such demonstration buildings may be leased or otherwise occupied without certification of compliance. If in compliance with the requirements of Section 5.3, the demonstration projects may be marketed to private parties. The Developer shall provide a notice that a building was constructed pursuant to this section to any prospective user or purchaser prior to the use, lease or sale of the structure to the public.

7.0 CERTIFICATION OF COMPLIANCE

The parties recognize that the Revised IMPACT System includes both Performance Targets to be reached over time, as provided in Sections 3 and 4, and specific resource conservation requirements, as provided in Section 5, which establish minimum thresholds for performance and which are to be met commencing with the initial development of Civano in order to establish progress toward achieving the Performance Targets. The Developer agrees to establish this compliance through the Monitoring Report and compliance with Specific Requirements as set forth below.

7.1. During the initial development of Neighborhood 1 of Civano, and thereafter during the development of Civano until changed by mutual agreement of the parties, the Developer shall provide to the City a certification based upon information provided to it by a professional chosen by the Developer that the plans subject to the certification are in compliance with the conservation requirements set forth in Section 5.3.1. The form of the certification is attached as Exhibit 2.

7.1.1. The City may audit any such certification and may request in writing supporting documentation from the Developer. The Developer shall provide such documentation within fifteen (15) days of receipt of the notice. If it is determined by the City based upon such an audit that the conservation requirements of Section 5.3.1 have not been met for one or more buildings, the City shall notify the Developer and the applicant submitting the building plan(s) in writing of the specific matters which are not in compliance (the "Noncompliance Notice").

7.1.2. The Developer shall have thirty (30) days from the date of the Non-Compliance Notice, unless the time is extended in writing by the City, to either cure the non-compliance or to submit a plan to correct the noncompliance (the "Cure Statement"), which is acceptable to the City. The City shall have fifteen (15) days from receipt of the Cure

Statement to either accept or reject the Cure Statement as submitted or to request further information or actions. The parties may thereafter continue to seek a mutual resolution of the problem.

- 7.1.3. If the City rejects the cure as proposed by the Developer pursuant to Section 7.1.2, the Developer may submit to the City a supplemental plan for curing the non-compliance (the "Supplemental Compliance Plan"). If a Supplemental Compliance Plan is submitted, no further action shall be taken regarding the non-compliance for at least forty-five (45) days. By submitting the Supplemental Compliance Plan, the Developer agrees that all requests for permits which contain a substantially similar non-compliance problem will be put on hold pending final resolution of the issue.
- 7.1.4. If the City and the Developer are unable to resolve differences regarding the Noncompliance Notice and the Cure Statement within sixty (60) days of the date of the Noncompliance Notice, or differences regarding the Supplemental Compliance Plan within forty-five (45) days of the submittal of the Plan, the matter may be submitted by the City or by the Developer to the City Manager for final resolution as provided in Section 6 of the Revised Development Agreement.
- 7.1.5. A City audit of a plan shall not delay the processing or approval of the plan.
- 7.1.6. Upon issuance of the Noncompliance Notice, the City may delay issuance of permits for the plan subject to the notice and all other plans which contain the same potential noncompliance problem until the question of compliance with the requirements of Section 5.3.1 is resolved. The City shall include notice that issuance of permits will be delayed in the Noncompliance Notice.
- 7.1.7. If the parties agree that a plan is not in compliance pursuant to Sections 7.1.1 and 7.1.2 or the City Manager determines that the plan is not in compliance pursuant to Section 7.1.3, the City may deny the issuance of permits to the proposed structure and any other structures which would not be in compliance for the same reason. In determining whether to deny the issuance of permits the City shall consider the materiality of the noncompliance, the Developer's ability to correct the problem with respect to future buildings, the number of building which would not be in compliance if permits were issued, the cost of curing the noncompliance in the proposed plan and the financial cost to the builder or developer which would result from any denial of permits.

- 7.1.8. If the City determines that the certification pursuant to Section 7.1 has resulted in a material noncompliance with the requirements of Section 5.3.1, the City may require that future review and approval of compliance with one or more of the requirements in Section 5.3.1 shall be determined by the City Development Services Department rather than by the Developer.
- 7.2. During the initial development of a Phase or Neighborhood of Civano, and thereafter during the development of Civano until changed by mutual agreement of the parties, the City Development Services Department shall, pursuant to its standard procedures including the availability of independent third party review as provided in the 1994 Uniform Administrative Code, Section 103, where appropriate, determine compliance with all Specific Requirements set forth in Sections 5.2 and 5.3 other than the requirements of Section 5.3.1, subject to review by the Interpretive Review Committee and appeal to the City Manager as provided in Section 5.4 of this Revised MOU and Section 6 of the Revised Development Agreement.
- 7.3. The parties recognize that the goal of Civano is to integrate energy and resource conservation principles, standards and technologies into the standard practices and procedures of the City. Thus the parties anticipate that as experience is gained over time with the implementation of the Revised IMPACT System, the parties will be able to develop less burdensome compliance review procedures without any reduction in the progress toward achieving the Performance Targets.

8.0 AMENDMENT

The parties may periodically review this Revised MOU to ensure that it continues to promote the energy and resource conservation and sustainable development goals of Civano and may amend this Revised MOU by mutual agreement or as set forth herein to achieve the Performance Targets and Specific Requirements of the Revised IMPACT System Standards and to meet changing circumstances as Civano development proceeds.

If, on the basis of the Monitoring Reports, the analysis and recommendations of the Civano IMPACT Committee, or independent information which has been reviewed by the Civano IMPACT Committee, either party determines that development is not progressing toward full compliance with the Revised IMPACT System Standards in a satisfactory manner, it may notify the other party in writing of its intent to amend this Revised MOU and/or the Revised IMPACT System. The City shall provide a copy of the notice to the Arizona State Department of Commerce, Energy Office. The parties shall then negotiate in good faith to establish appropriate amendments to ensure compliance with the goals and requirements of the Revised IMPACT System. Any amendment shall consider the economic impact of the proposed requirement upon the development of Civano and the investment of public funds and grants in this development. If the parties are unable to mutually agree upon amendments within

sixty (60) days, they shall discuss any issues with the City Manager, and the City Manager may, as provided in Section 6 of the Revised Development Agreement, resolve such issues and impose amendments which he deems reasonably necessary to achieve the goals of the Revised IMPACT System.

Any amendment to this Revised MOU shall not apply to any application for development approval, including PADs and rezonings, subdivision plats, development plans and building permits, that has already been submitted for review to the City prior to the notice of the intent to amend this Revised MOU, unless such development approval expires pursuant to existing code provisions. The parties shall provide notice of any amendment to the Arizona Department of Commerce, Energy Office. Any such amendment shall be in writing. Amendments to the Revised IMPACT System Standards shall be approved by the Mayor and Council.

Any application by Civano for a change of the Master Plan, the Rezoning Conditions or the conditions of any PAD which are adopted by the Mayor and Council subsequent to the signing of this Revised MOU shall supercede any requirement herein.

9.0 REMEDIES

The Monitoring Report, Periodic Evaluation and Specific Procedures for Implementation set forth in Sections 3.2, 3.3 and 5 above shall be the only portion of the Revised MOU which shall be subject to the remedies provided in Section 8.8 of the Revised Development Agreement. In addition to these remedies, the City shall not be required to issue any building permit which does not conform to City codes, existing and future specific plans and zoning and the requirements which are included in Section 5, Specific Procedures for Implementation, as set forth herein or as amended or revised pursuant to Section 8.0.

10.0 NON-WAIVER OF COMPLIANCE

Except as may be expressly agreed in writing, any decision by the City approving further development without complete compliance with all requirements and targets shall not constitute a waiver of any future application of requirements or Performance Targets as set forth in this Revised MOU or in the Revised IMPACT System Standards.

Signed this 8th day of December, 2003.

THE COMMUNITY OF CIVANO, LLC

CITY OF TUCSON

By: 

Judith L. Kilroy
Its Authorized Representative

By: 

James R. Keene
City Manager

December 8, 2003

PULTE HOME CORPORATION, a
Michigan corporation,

By: [Signature]
Its: Attorney-in-fact
Date: December 8, 2003

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this 8th day of
December, 2003, by Bruce Stokes, the
authorized representative of Pulte Home Corporation, a Michigan corporation.

[Signature: Gerardina M. Castro]
Notary Public

My Commission Expires:
7-9-04

