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OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

# *Resolution*

## RESOLUTION NO. 708

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN  
LUIS, ARIZONA APPROVING AMENDMENT TO RIO SECO  
DEVELOPMENT AGREEMENT DATED APRIL 20, 2004

Whereas, Kim Eggleston ("Developer") entered into a development agreement ("Development Agreement") with the City of San Luis, Arizona ("City") on or about April 20, 2004 entitled "Rio Seco Development Agreement";

and

Whereas, the parties to the Development Agreement desire to accordingly amend said agreement;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: That the Amendment to the Rio Seco Development Agreement dated April 20, 2004, as attached hereto as Exhibit "A", is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said Amendment on behalf of the City and take any all actions as may be necessary to effectuate said agreement.

PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Juan Carlos Escamilla, Mayor

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**ATTEST:**

\_\_\_\_\_  
Sonia Sanchez, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Glenn Gimbut, City Attorney

## AMENDMENT TO RIO SECO DEVELOPMENT AGREEMENT

This Amendment is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of San Luis, Arizona, a municipal corporation, (“City”), and Kim Eggleston, a married man, on behalf of himself and his community of marriage (“Developer”).

### RECITALS

On or about April 20, 2004 City and Developer entered into a development agreement entitled “Rio Seco Development Agreement.” This agreement was for the property described on Exhibit “A” attached hereto (“Property”). The agreement provided, in part, that the Developer would comply with all City ordinances, codes, policies, and standards, in effect as of the date of the development agreement. An ordinance requirement of the City, in effect since 2001, and in effect on the date of the development agreement, was the requirement that the only manufactured housing units built prior to the implementation of the United States Department of Housing and Urban Development Manufactured Construction and Safety Standards (hereinafter referred to as “Pre-HUD Housing Units”) that would be allowed to be installed in the City were those units that were already existing in City limits. Said units were required to be rehabilitated to standards required by the State of Arizona Office of Manufactured Housing, receive a certificate of compliance by the State of Arizona, and bear an Arizona Insignia of Approval. These are still the legal requirements of the City of San Luis.

Developer desires to be allowed to install Pre-HUD Housing Units that are not presently located in the municipal limits of City.

Developer understands and agrees that Pre-HUD Housing Units were not, as a general rule, built to any particular safety standards, codes, or other form of governmental regulation. Developer understands and agrees that said units are now more than thirty years old. Developer agrees that due to time and movement of Pre-HUD Housing Units, the structural integrity of such units have deteriorated. Developer understands and agrees that the rehabilitation program of the State of Arizona Office of Manufactured Housing does not deal with minimum safety standards for structural integrity, and that Pre-HUD Housing Units were not built using current fire resistant materials and construction techniques. Developer understands and agrees that the City has the legal power to ensure safe housing for its residents. Developer agrees that, as a general rule, Pre-HUD Housing Units, even when rehabilitated to the standards of the State of Arizona Office of Manufactured Housing, are not as sound or safe as units built to the United States Department of Housing and Urban Development Manufactured Construction and Safety Standards.

#### AGREEMENT

In consideration of the mutual covenants contained herein, the parties agree to amend the Rio Seco Development Agreement, dated April 20, 2004, as follows:

1. City agrees to allow Pre-HUD Housing Units from outside municipal limits to be installed for Phase One of the project (60 spaces), only. Said units are required to be rehabilitated to standards required by the State of Arizona Office of Manufactured Housing, receive a certificate of compliance by the State of Arizona, and bear an Arizona Insignia of Approval. Developer understands and agrees that if said Pre-HUD Housing units are replaced, the replacement units shall comply with the then current regulations of

the City, and may not necessarily be allowed to be Pre-HUD Housing Units. Phases Two, Three, and Four shall only install units which comply with the then current legal requirements of the City and the State of Arizona. At a minimum these would be units that are either built to the United States Department of Housing and Urban Development Manufactured Construction and Safety Standards, or are Pre-HUD Housing Units that already legally exist in the municipal limits and have received a certificate of compliance by the State of Arizona and bear an Arizona Insignia of Approval.

2. Developer understands and agrees that for the City to permit the installation of Pre-HUD Housing Units from outside municipal limits, the City will have to amend its ordinances. The City in order to implement this amendment intends to change its ordinances to permit the installation of Pre-HUD Housing Units from outside municipal limits, then amend its ordinances again to preclude their installation.

3. By signing this Agreement, the Developer acknowledges that Developer waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. §12-1134, or any other cause of action, for any reason, whatsoever, known or unknown. This waiver shall specifically include claims related to the municipal restrictions on the installation of manufactured homes, presently existing, or which may be adopted during the term of the Rio Seco Development Agreement, including, but not limited to, the re-implementation of the limitation of installation of Pre-HUD Housing Units to those units already legally existing within municipal limits. Developer further agrees to indemnify and hold City harmless from any and all claims brought by other property owners due to implementation of this amendment, including

claims brought pursuant to A.R.S. §12-1134, including indemnifying and holding the City harmless from any costs and attorneys fees that it may incur.

4. The provisions of the Rio Seco Development Agreement dated April 20, 2004, unless modified herein, shall remain in full force and effect.

5. This Amendment, the Rio Seco Development Agreement dated April 20, 2004, , any exhibits attached thereto, and any addendum, constitute the entire understanding and agreement of the Developer and the City and shall supersede all prior agreements or understandings between the Developer and City regarding the above-referenced property. This Agreement may not be modified or amended except by written agreement by the Developer and City.

6. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

7. Within ten days after the execution of this Agreement, the City Clerk shall file the Agreement in the Official Records of the County Recorder's Office, Yuma County, Arizona.

8. This Agreement runs with the land and is binding upon all present and future owners of the above-referenced property.

9. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

10. The Developer warrants and represents that Developer is the owner of fee title to the above-referenced property, and that no other person has an ownership interest in the property. The person who signs on behalf of Developer personally warrants and guarantees to the City that he has the legal power to bind Developer and the owner or