



WHEN RECORDED MAIL TO:

CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, AZ 85349

*COPY
AS TO FILING DATA ONLY*

FEE #: 2008 — 32532

11/06/2008 02:44 PAGES: 0003
FEES: 3.00 4.00 1.00 .00 .00
REQ BY: CITY OF SAN LUIS
REC BY: Margie Gamache

CAPTION HEADING:

Resolution No. 801



Resolution

RESOLUTION NO. 801

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND GOLD DREDGE L.L.C. AND JASON MOREHOUSE AND CAROL MOREHOUSE, HUSBAND AND WIFE

Whereas, Gold Dredge L.L.C. and Jason Morehouse and Carol Morehouse ("Owners") are the owners of the property known as Meadowcraft and have signed an annexation petition to annex their property into the municipal limits of the City of San Luis ("City") and desire to enter into a development agreement ("Development Agreement") with the City to provide for the zoning, use, and development of their property;

Whereas, A.R.S. §9-500.05 grants power to a municipality to enter into development agreements which provide conditions, terms, restrictions and requirements for zoning, use and development of property;

Whereas the City Council finds that provision for zoning, use and development of the property is appropriate at this time; and

Whereas, the parties to the Development Agreement desire to enter into 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 Development Agreement between the City of San Luis, Arizona and Gold Dredge L.L.C. and Jason Morehouse and Carol Morehouse, husband and wife, 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 agreement 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 10th day of September, 2008.

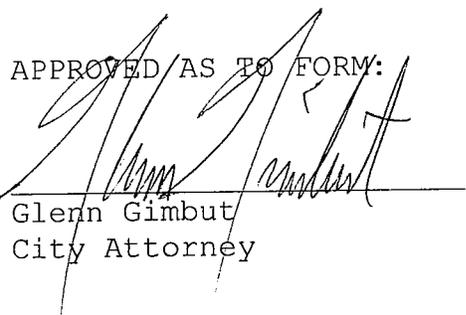

Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut
City Attorney

WHEN RECORDED MAIL TO:

**CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, AZ 85349**

**COPY
AS TO FILING DATA ONLY**

**OFFICIAL RECORDS OF
YUMA COUNTY RECORDER
SUSAN MARLER**



FEE #: 2008 - 32533
11/06/2008 02:44 PAGES: 0012
FEES: 6.50 4.00 1.00 .00 .00
REQ BY: CITY OF SAN LUIS
REC BY: Margie Gamache

CAPTION HEADING:

**Development Agreement
Gold Dredge, LLC
Jason Morehouse & Carol Morehouse**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 10th day of September, 2008, by and between Gold Dredge, LLC, a California limited liability company authorized to do business in the State of Arizona, and Jason Morehouse and Carol Morehouse, husband and wife, (collectively, "Owner") and the City of San Luis, an Arizona municipal corporation (the "City"). This Agreement is entered into pursuant to City Resolution Number 801.

RECITALS

- A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City;
- B. WHEREAS, Owner owns a property known as the Meadowcraft facility which located at on Highway 95, just north of the existing municipal limits of the City, said facility having been developed as an industrial manufacturing facility for the manufacture and distribution of furniture;
- C. WHEREAS, City desires to have annex the Property of Owner and Owner desires to be annexed as long as use of the Property for Heavy Industrial Uses can be established and maintained;
- D. WHEREAS, City does not presently have a zoning classification allowing Heavy Industrial Uses, but is in the process of re-writing its zoning code to allow for such uses;
- E. WHEREAS, City finds the Property of Owner to be appropriate for Heavy Industrial Use;
- F. WHEREAS, A.R.S. §9-500.05.A authorizes pre-annexation development agreements; and
- G. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No. 801, a draft of which is attached to this Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1. "City" shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

1.2 "Improvements" shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Owner or the City, as the case may be, pursuant to the terms of this Agreement.

1.3 "Owner" shall mean and refer to Gold Dredge, LLC, a California limited liability company authorized to do business in the State of Arizona, and Jason Morehouse and Carol Morehouse, husband and wife, or nominee and their respective successors and assigns.

1.4 "Property" as used in this Agreement shall mean and refer to al of the real property which is legally described in Exhibit A.

ARTICLE 2. DURATION

2.1 Duration of Development Agreement. The term of this Agreement shall continue and exist from the effective date of this Agreement until the Property is rezoned to Heavy Industrial Use or two years from the date of the adoption of the Resolution of City approving and authorizing this Agreement, whichever event first occurs.

ARTICLE 3. ZONING AND USE OF PROPERTY

3.1 The parties hereby acknowledge that the Property was developed in unincorporated Yuma County, Arizona as an industrial manufacturing facility. The furniture manufacturing and distribution uses for which the Property was initially developed ceased operations several years ago. The Property is presently zoned by Yuma County for light industry. Owner desires zoning for heavy industry. City acknowledges and agrees that the land and Property of Owner as described on Exhibit A is appropriate to be used for heavy industry. At present time the City does not have a category allowing heavy industrial uses within its zoning code. The closest category that presently exists is light industry. At present time the City is in the process of rewriting its zoning code and anticipates its adoption within the next four months. A heavy industrial zone is anticipated to be created as part of that code. City agrees, once the new zoning code has been adopted, at its expense, to proceed and zone the Property to Heavy Industrial Use. Until such time as the Property is so zoned, the City agrees to allow the Owner to use the Property in conformance with the draft provisions of the proposed new code for heavy industry and establish uses conforming to those provisions. A copy of those provisions is attached as Exhibit B hereto and by this reference are incorporated herein as though fully set forth again in full.

Additionally Owner has a proposed tenant for part of its Property which proposes to establish a use for the recycling of batteries, and more particularly automotive vehicle batteries. The tenant proposes to recycle batteries and produce from them plastic pellets, lead bars, and acid, each suitable for remanufacture into other products. City acknowledges that it has been fully informed of the proposed user and the proposed anticipated use. City agrees that said use may be established on the Property of Owner, and that, notwithstanding the duration of this Agreement, City will take such actions as may be necessary to cause said use to be a legal conforming use of Property during the Lease term of such tenant.

ARTICLE 4. OWNER AGREEMENTS

4.1 Owner agrees to execute a Proposition 207 Waiver in the form attached as Exhibit C attached hereto prior to completion of annexation.

4.2 Owner agrees to sign appropriate annexation petitions to annex the Property to the municipal limits of City. It is understood and agreed that this Agreement will not become operative until or unless annexation proceedings to annex the Property to City are completed as provided by A.R.S. §9-500.05.A.

4.3 Owner agrees to assign to City the right to take delivery of water from the Yuma County Water Users Association for the purpose of conversion for the Property which is the subject of this Agreement. City acknowledges and agrees that Owner will be entitled to City water utility service upon completion of the process of annexation into the municipal limits of City. To the extent that Owner has the contractual right or otherwise legal ability to make such an assignment, Owner, on behalf of themselves, and any successor in interest, agrees to execute and deliver to City an assignment to take delivery of water from the Yuma County Water Users Association for the purpose of conversion at such time as water service is available to the Property, but in no event any later than the termination date of this Agreement. At all times City agrees that Owner may use its well or wells that are presently onsite for water service and may take delivery of water from the Yuma County Water Users Association, until or unless City actually takes delivery of water from the Yuma County Water Users Association and is able to convert said water and deliver it back to Owner.

ARTICLE 5. MEDIATION AND DEFAULT

5.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the "City Representative") shall be the City Manager and the initial representative for the Owner shall be Jim Holmes of Holmes Commercial Properties, Inc., and as otherwise identified by the Owner from time to time (the "Owner Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement.

5.2 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbonding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Owner shall request the presiding judge of the Superior Court in and for the County of Yuma, State of Arizona, to appoint a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The cost of any such mediation shall be divided equally between the City and Owner. The results of the mediation shall be nonbonding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

5.3 Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, termination, specific performance, and/or 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 said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

ARTICLE 5. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

6.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

6.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

7.5 Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties. This provision applies only to the entirety of this Agreement only; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

7.6 Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successor in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

7.7 Severability. If any other provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

7.8 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

7.9 Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement amendment or cancellation, as required by A.R.S. § 9-500.05.

7.10 Attorney's Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorney's fees and court costs.

7.11 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

7.12 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

7.13 Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: City Administrator
 P.O. Box 1170
 1090 East Union Street
 San Luis, AZ 85349

If to the Owner: c/o Jim Holmes
 Holmes Commercial Properties, Inc.
 1817 Maryal Drive, Suite 112
 Sacramento, CA 95864

or such other addresses as either party may from time to time designate in writing and deliver in a like manner . Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

7.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

7.3 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

7.4 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

OWNER

[Handwritten signature]

Thomas J. Tuohy
Manager of Gold Dredge, LLC

[Handwritten signature]

Jason Morehouse

[Handwritten signature]

Carol Morehouse

State of California

County of Placer

On September 19, 2008 before me,
Constance B Easterly, Notary Public
 (insert name and title of the officer)

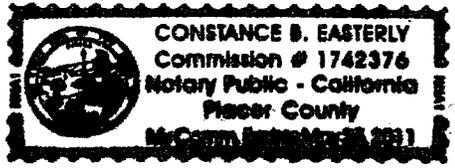
personally appeared Carol Morehouse
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Constance B Easterly
 (Notary's Signature)

[seal]



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer

On October 7, 2008

Date

before me, Constance B. Easterly, Notary Public

Here Insert Name and Title of the Officer

personally appeared Jason Morehouse

Name(s) of Signer(s)

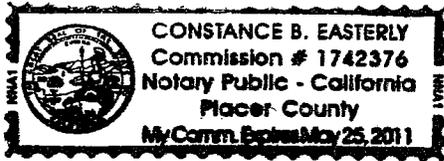
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Constance B. Easterly

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: 9-10-08

Number of Pages: 9

Signer(s) Other Than Named Above: Thomas J. Tuckey & Carol Morehouse

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jason Morehouse

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Placer

On October 22, 2008

Date

before me,

Constance B Easterly Notary Public

Here Insert Name and Title of the Officer

personally appeared

Thomas J. Tuohy

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

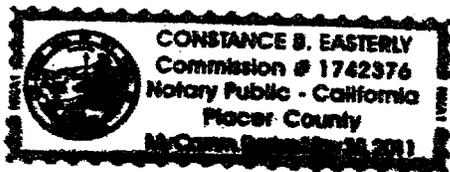
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Constance B Easterly

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Development Agreement

Document Date:

9-10-08

Number of Pages:

9

Signer(s) Other Than Named Above:

Jason & Carol Morehouse

Capacity(ies) Claimed by Signer(s)

Signer's Name: Thomas J. Tuohy

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



Signer is Representing:

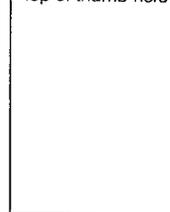
Gold Dredge LLC

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



Signer is Representing: _____

Exhibit A
Legal Description
APN- 767-05-009
Meadowcraft Facility

The North half of the West half of the Southwest quarter of section 25, Township 10 South, Range 25 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona.

EXCEPT those portions of the Southwest quarter of Section 25, Township 10 South, Range 25 West, Gila and Salt River Meridian, Yuma County, Arizona, hereinafter defined as Tract No. 1 and Tract No. 2, which are described as follows:

Tract No. 1

The West 83.00 feet of said Southwest quarter. EXCEPT therefrom any portion situated within the South 466 feet of the West 466 feet of the Southwest quarter of said Section.

Tract No. 2

Commencing at the West quarter corner of said Section 25, being the Northwest corner of Tract No. 1 (previously described herein) Thence along the North line of said Southwest quarter, South 89°36'18" East 128.18 feet to the POINT OF BEGINNING. Thence perpendicular to the aforesaid North line, South 00°23'42" West 40.00 feet; Thence South 45°16'02" West 63.50 feet to the East line of the aforesaid Tract No. 1; Thence along said East line, North 00°08'23" East 85.00 feet to the aforesaid North line of said Southwest quarter. Thence along the aforesaid North line South 89°36'18" East 45.18 feet to the POINT OF BEGINNING. SUBJECT TO Existing Road Right of Way traversing the North 40.00 feet of said Southwest quarter, as described in Docket 2018, page 510, records of Yuma County, Arizona.