

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Development Services

AGENDA DATE: February 5, 2008

CONTACT PERSON/PHONE: Larry F. Nichols, Deputy Director, Ext. 4557

DISTRICT(S) AFFECTED: 1

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Arcraft Commercial Unit Two Subdivision-obtain permission from the City Council for a Conditional "B" permit as per Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits, see attached Letter from CEA Group owner and developer for Arcraft Commercial Unit Two Subdivision.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Not for this subdivision

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

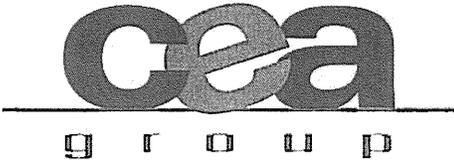
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

CITY CLERK DEPT.
09 JAN 28 AM 11:48



Castner Center @ Transmountain
4712 Woodrow Bean, Ste. F
El Paso, TX 79924
Office: 915.544.5232
Fax: 915.544.5233
web: www.ceagroup.net

January 25, 3008

City of El Paso
Two Civic Center Plaza-5th Floor
El Paso, Texas 79901

Attention: Omar Soueidan

Reference: Aircraft Commercial Unit Two-Conditional B Building Permits

Dear Mr. Soueidan:

On behalf of the developer for the above referenced project, we are requesting Conditional B Building Permits for Lot 1, Block 2, Aircraft Commercial Unit Two. Our request is for the release of a permit for a future Holiday Inn Express. Our request for Conditional B Building Permits is based on economic hardship. Enclosed, please find the recorded Development Agreement.

If you have any questions, please do not hesitate to call me at 915.544.5232 or mobile number 915.355.0583.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge L. Azcarate', written over a horizontal line.

Jorge L. Azcarate, P.E.
Project Manager

I-2000-079lz.os.25january08
JLA/jla

Enclosure: Development Agreement

CITY CLERK DEPT.
08 JAN 29 AM 11:48

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 22ND day of JANUARY, 2008, by and between TKG-ARTCRAFT, LLC (hereinafter referred to as "Developer"), a Texas corporation, and VISVAS II PARTNERSHIP (hereinafter referred to as "Applicant"), a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of ARTCRAFT COMMERCIAL UNIT TWO SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal Code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
 - A. **an Unconditional Building Permit** may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
 - B. **a Conditional "A" Building Permit** may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
 - C. **a Conditional "B" Building Permit** may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

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3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.
4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER

APPLICANT:

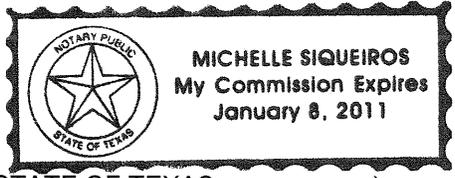
By: *[Signature]*
 TKG-ARTCRAFT LLC

By: *[Signature]*
 VISVAS II PARTNERSHIP

CITY CLERK DEPT.
08 JAN 28 AM 11:49

STATE OF TEXAS)
 COUNTY OF EL PASO)

This instrument was acknowledged before me on this 22nd day of January, 2008, by Vipin Bhakta of Visvas II Partnership, a State of Texas Company, on behalf of said Company.



[Signature]
 NOTARY PUBLIC FOR THE STATE OF TEXAS
 Printed Name: Michelle Siqueiros
 My Commission Expires: January 8, 2011

STATE OF TEXAS)
 COUNTY OF EL PASO)

This instrument was acknowledged before me on this 23rd day of January, 2008, by R.L. Bowling III of TKG-Artcraft LLC, a State of Texas Company, on behalf of said Company.



[Signature]
 NOTARY PUBLIC FOR THE STATE OF TEXAS
 Printed Name: Michelle Siqueiros
 My Commission Expires: January 8, 2011