

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

**DEPARTMENT:**     Development Services

**AGENDA DATE:**    March 14, 2006

**CONTACT PERSON/PHONE:** R. Alan Shubert, P.E., C.B.O., Development Services Director, Ext. 4557

**DISTRICT(S) AFFECTED:**   6

**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.

Arbour Green 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 JNC Development, Inc., owner and developer for Arbour Green 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:**

N/A

**BOARD / COMMISSION ACTION:**

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:** \_\_\_\_\_

Date: March 1, 2006

TO: City Clerk

FROM: Lucy Guerrero

Please place the following item on the Regular Agenda for the Council Meeting of:  
March 14, 2006.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

Arbour Green Unit Two Subdivision (District 6)

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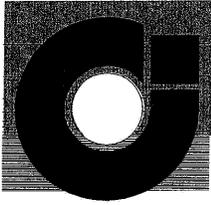
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Special Instructions: Development Services Department for information contact:  
R. Alan Shubert., P.E., C.B.O. at 541-4557.

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City Clerk's Use

Action Taken: \_\_\_\_\_ Item No. \_\_\_\_\_



**CONDE INC**

March 2, 2006

**Development Services Department**

#2 Civic Center Plaza

City of El Paso, Texas 79902

Attention: **Omar Soueidan**, Civil Engineering Associate 2

Re: Arbour Green Unit Two

Dear Omar,

We respectfully request a "Conditional B" permits for the above mentioned subdivision as per Municipal Code 18.02.103.1.1.6.1 as per J.N.C. Land Development Inc. The permit is requested due to the economic hardship and public benefit for the property owner.

All of the subdivision improvements are in place: streets, pond, drainage structures and all utilities. The As Built mylars have been submitted to the city. All that remains pending is compliance with some of the punch list items.

If you have any questions or comments on the above please let me know. Thank you for your time and consideration in this matter.

Sincerely,

Yvonne C. Curry, P.E.  
Project Engineer

copy: Charlie Bombach, Saratoga Homes

Arbour2CondB

ENGINEERING/PLANNING/SURVEYING

VISTA HILLS BANK PLAZA / 1790 LEE TREVINO, SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 14th day of June, 2005, by and between **JNC Development, INC.**, a Texas Corporation, hereinafter referred to as "Developer", and **Saratoga Homes, Ltd.**, a Texas Limited Partnership, hereinafter referred to as "Applicant", for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of Arbour Green Unit #2, a subdivision in the City of El Paso, El Paso County, Texas (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) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction)(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 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 Section 18.04.035 of the 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 City Engineer 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 (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein 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 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.

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 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 City Engineer, and with respect to Conditional "B: Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

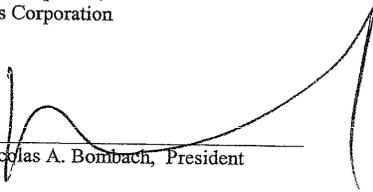
5. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

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.

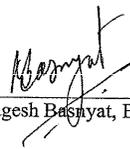
DEVELOPER:

**JNC Development, INC.**  
A Texas Corporation

By:   
Nicolas A. Bombach, President

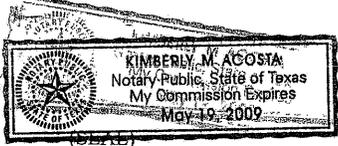
APPLICANT:

**Saratoga Homes, Ltd.**  
A Texas Limited Partnership

By:   
Nagesh Basnyat, Estimator

STATE OF TEXAS }  
COUNTY OF EL PASO }

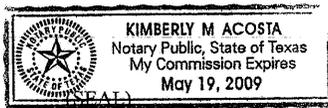
This instrument was acknowledged before me on this 14 day of June, 2005,  
by Nicolas A. Bombach, President of JNC Development, Inc. dba Pegasus Group, on behalf of said Corporation.



  
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS }  
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 14 day of June, 2005,  
by Nagesh Basnyat.



  
NOTARY PUBLIC FOR THE STATE OF TEXAS

## DEVELOPMENT AGREEMENT

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WHEREAS, Developer is the owner and developer of Arbour Green Unit #2, a subdivision in the City of El Paso, El Paso County, Texas (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) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction)(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 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 Section 18.04.035 of the 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 City Engineer 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 (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein 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 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.
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 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 City Engineer, and with respect to Conditional "B: Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

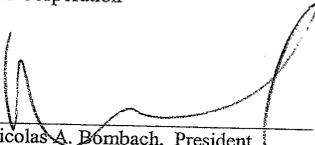
5. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

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.

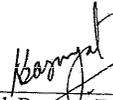
DEVELOPER:

JNC Development, INC.  
A Texas Corporation

By:   
Nicolas A. Bombach, President

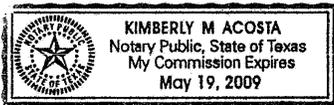
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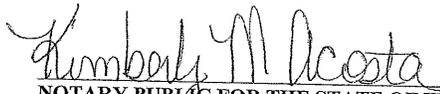
By:   
Nagesh Basnyat, Estimator

STATE OF TEXAS            }  
  }  
COUNTY OF EL PASO        }

This instrument was acknowledged before me on this 14<sup>th</sup> day of June, 2005,  
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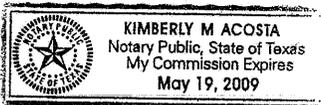


(SEAL)

  
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS            }  
  }  
COUNTY OF EL PASO        }

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(SEAL)

  
NOTARY PUBLIC FOR THE STATE OF TEXAS

**DEVELOPMENT AGREEMENT**

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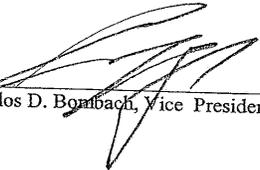
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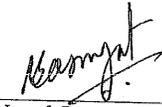
DEVELOPER:

JNC Development, INC.  
A Texas Corporation

By:   
Carlos D. Bombach, Vice President

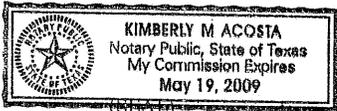
APPLICANT:

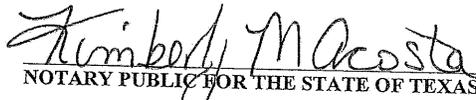
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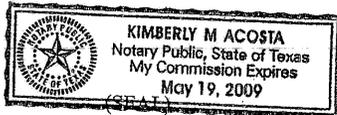
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