

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

**DEPARTMENT:**     Development Services

**AGENDA DATE:**    November 6, 2007

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

**DISTRICT(S) AFFECTED:**   5  

**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.

Tres Suenos Unit One 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 Tres Suenos Unit One 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:** \_\_\_\_\_

Date: October 25, 2007

TO: City Clerk

FROM: Lucy L. Guerrero

Please place the following item on the Regular Agenda for the Council Meeting of:  
November 6, 2007

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:  
Tres Suenos Unit One Subdivision (District 5)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Special Instructions: Development Services for information contact:  
Larry F. Nichols, Deputy Director, 541-4557

City Clerk's Use

Action taken: \_\_\_\_\_ Item No. \_\_\_\_\_

# JNC Development, Inc.

October 10, 2007

Mr. Omar Soueidan  
Civil Engineer Associate II  
Engineering Department, Fourth Floor  
City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901

**RE: Tres Suenos Unit One Subdivision, City and County of El Paso, Texas**

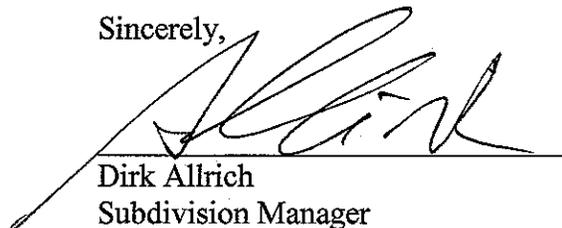
Dear Mr. Soueidan:

JNC Development, Inc., the owner and developer of Tres Suenos Unit One Subdivision, respectfully requests that you grant us Conditional "B" acceptance. The Conditional "B" acceptance request is necessary for the builder to provide 100% of lots for all three involved home builder and to insure an uninterrupted flow of construction work and housing product for the general public and to prevent financial hardship.

Due to excessive approval time of the in the subdivision improvement plans included park, a final acceptance is to that point of time not possible. The construction will still take approximately 4 weeks.

The utility extensions for the subdivision are hundred percent completed and the street paving is also completed. We greatly appreciate your assistance in this endeavor. Please call if you need additional information or have any questions.

Sincerely,



Dirk Allrich  
Subdivision Manager

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 8th day of May, 2007, by and between East Montana Joint Venture, LP, a Texas Limited Partnership, hereinafter referred to as "Developer", and Saratoga Homes, Ltd., a Texas Limited Partnership, Bowling Construction, LLC dba Tropicana Homes, a Texas Limited Liability Corporation, and Carefree Homes II, LP, 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 Tres Suenos Unit One, 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.

*N.B. / AS*

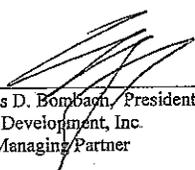
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

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.

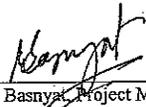
DEVELOPER:

East Montana Joint Venture, LP  
A Texas Limited Partnership

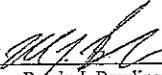
By:   
Carlos D. Bombach, President  
JNC Development, Inc.  
Its: Managing Partner

APPLICANT:

Saratoga Homes, Ltd.  
A Texas Limited Partnership

By:   
Nagesh Basnyal, Project Manager

Bowling Construction, LLC  
dba Tropicana Homes  
A Texas Limited Liability Corporation

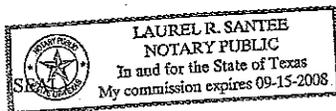
By:   
Randy J. Bowling, President

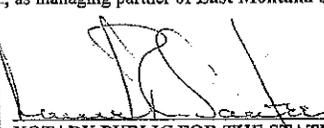
Carefree Homes II, LP  
A Texas Limited Partnership

By:   
Frank Arroyos, III, President

STATE OF TEXAS            }  
  }  
COUNTY OF EL PASO        }

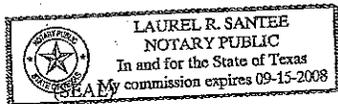
This instrument was acknowledged before me on this 8<sup>th</sup> day of May, 2007, by Carlos D. Bombach, President of JNC Land, L.P., as managing partner of East Montana Joint Venture, LP, on behalf of said Corporation.



  
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS }  
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 8th day of May, 2007,  
by Nagesh Basnyat.



*Laurel R. Santee*  
NOTARY PUBLIC FOR THE STATE OF TEXAS

NOTARY PUBLIC FOR THE STATE OF TEXAS  
LAUREL R. Santee  
1000 W. 10th Street  
El Paso, TX 79902  
Phone: 915.733.1111  
Fax: 915.733.1112  
E-mail: lsantee@notary.com

STATE OF TEXAS }  
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 9th day of May, 2007,  
by Randy J. Bowling.

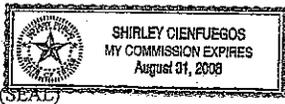


*Martha L. Aranda*  
NOTARY PUBLIC FOR THE STATE OF TEXAS

COMMISSION EXPIRES 06-21-2007

STATE OF TEXAS }  
COUNTY OF EL PASO }

This instrument was acknowledged before me on this 9th day of May, 2007,  
by Frank Arroyos, III.



*Shirley Cienfuegos*  
NOTARY PUBLIC FOR THE STATE OF TEXAS