



RESOLUTION NO. 11-006

A Resolution Authorizing the Acceptance of Unit 1 and the Detention Basins in Units 3 and 4 in the Balmorea Subdivision by the Village of Montgomery, Kane and Kendall Counties, Illinois

WHEREAS, the Village of Montgomery desires to expand and grow in an orderly and planned fashion and to provide certain municipal services to residents living in newly constructed areas; and

WHEREAS, certain tangible, physical public improvements are necessary for the provision of the aforesaid municipal services to the residents and occupants of newly constructed areas; and

WHEREAS, the Village of Montgomery has previously authorized the construction of a certain development known as Balmorea within the municipal boundaries and subject to all applicable Village ordinances; and

WHEREAS, the Village, along with the other appropriate public authorities, has permitted the construction of certain public improvements within the aforesaid development; and

WHEREAS, certain public improvements were constructed within the aforesaid development for the purpose of providing municipal services to residents and/or occupants thereof; and

WHEREAS, the Village recognizes that it is within the best interests of the Village and the residents and occupants thereof to take possession of the aforesaid public improvements and to utilize and maintain them for the benefit of the Village; and

WHEREAS, the public improvements which the Village seeks to accept have been tested and examined by the Village and its staff and have been determined to be acceptable for the stated purposes and in substantial compliance with all applicable laws, regulations and ordinances;

NOW, THEREFORE, BE IT RESOLVED by the Village President and the Board of Trustees of the Village of Montgomery as follows:

1. Acceptance of all public improvements EXCEPT for Parcel 2 of Unit 1 which is a Detention Basin and Compensatory Storage Area and parkway trees, sidewalks and parkways in front of those lots that remain unconstructed: Notwithstanding all applicable resolutions, ordinances, regulations, agreements and/or contracts (if any) between the Village of Montgomery and JNC Development of Illinois LLC (or related entities), the Village shall formally accept the public improvements of Unit 1 and the Detention Basins of Unit 3 (Lot 62) and Unit 4 (Parcels 1 & 2) except for the exceptions listed above (as described in the final engineering plans and exhibits on file with the Village for said subdivision). This acceptance is conditioned on compliance with the letter attached hereto as Exhibit A that establishes the process for future acceptance of improvements in Units 2 and 3.

2. Authorization to Complete Acceptance: Upon fulfillment of the condition precedent noted above, the Village President and Secretary are hereby authorized to execute any documents in order to effect the acceptance of the public improvements, including Bills of Sale for the improvements and are further authorized to order such further inspection, review, completion of punch list items and receipt of lien waivers for the improvements they deem necessary prior to accepting said improvements.

3. Authorization to Utilize, Maintain and Repair: The Village staff of the departments appropriate to the improvements being accepted is, after acceptance thereof, authorized to utilize, maintain and repair the improvements as with any other improvement within the Village, subject to all applicable rules and regulations. This resolution shall be in full force and effect from and after its passage, approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois, this 11th day of April, 2011.

Marilyn Michelini
President of the Board of Trustees of the Village of
Montgomery, Kane and Kendall Counties, Illinois

AYES: 6

NAYS: 0

ABSENT: 0

ATTEST: Helen Prester
Helen Prester, Acting Clerk, Village of Montgomery





**Engineering
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March 8, 2011

Ms. Anne Marie Gaura
Village Manager
Village of Montgomery
200 N. River Street
Montgomery, IL 60538

**Re: *Balmorea (Saratoga Homes) Unit 1
Final Closeout***

Dear Ms. Gaura:

This letter is to certify that the public improvements in Balmorea Unit 1, the detention basin in Unit 3 (also known as lot 62), and the detention basins in Unit 4 (also known as parcels 1 & 2) have been satisfactorily completed in accordance with the Engineering Plans and Specifications, with the exception of:

- 1) The sidewalk and parkway trees of the unconstructed lots of Balmorea Unit 1.
- 2) The Unit 1 detention basin and compensatory storage area also known as parcel 2.

Please find attached the final closeout checklist for Balmorea Unit 1. The items noted on the checklists will be transmitted to the Village under separate cover.

Prior to acceptance of any portion of the Balmorea Subdivision Unit 1, the developer shall satisfy the requirements of paragraph 14 subparagraph G of the Annexation Agreement regarding the Dickson Road Realignment. In accordance with the Subdivision Control Ordinance, we conditionally recommend that the Village Board enact a resolution accepting the improvements. Following a 12 month guarantee period and receipt of the appropriate bill of sale, the improvements will be eligible for final acceptance by the Village.

The Developer is typically required to furnish an appropriate maintenance guarantee insuring the public improvements against faulty design, workmanship, or materials for a period of one year. This maintenance guarantee is normally established with the issuance of a letter of credit or bond for an amount of 10% of the original estimated cost of the public improvements. The Village of Montgomery has agreed to waive the maintenance bond requirement, but the

Ms. Anne Marie Gaura
March 8, 2011
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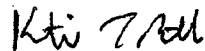
developer will still be required to repair all public improvements requiring maintenance within one year of acceptance.

However, the developer shall furnish a bond in the amounts of \$165,376 to cover the costs of the unconstructed sidewalk and parkway trees, grading revisions for outstanding individual lot as-builts (three lots), three buffalo box repairs, the detention basin and compensatory storage in Unit 1. Upon receipt of the requested bonds, the current bond for unit 1 (bond # 3075151) may be released.

If you have any questions or require additional information, please contact our office.

Respectfully submitted,

ENGINEERING ENTERPRISES, INC.



Kurtis T. Muth, P.E.
Senior Project Engineer I



Timothy N. Paulson, P.E.
Project Manager

TNP/KTM/arf

Enclosure

pc: Ms. Jane Tompkins, Director of Community Development
Mr. Jeff Zoephel, Director of Finance
Mr. Mike Pubentz, P.E., Director of Public Works
Mr. Michael Klupar, Building Inspector
Mr. Michael Brown, Village Planner
Mr. Pavan Peddireddy, Saratoga Homes
PGW, EEI



March 18, 2011

Ms. Anne Marie Gaura
Village Manager
200 N. River Street
Montgomery, Illinois 60538

RE: *Balmorea Subdivision -- Montgomery, Illinois*

Dear Ms. Gaura:

The purpose of this letter is to reach an agreement on the process of finalizing the acceptance of the public improvements in Unit 1, the detention ponds in Unit 4 and any related Annexation Agreement requirements with the Village of Montgomery for the Balmorea Subdivision. The only item in Unit 1 that is not being accepted at this time is the Westerly Storm Water detention area (Parcel 2 of Unit 1).

The punch list items have been completed except as noted below and we are in the process of obtaining a letter of credit to guarantee the installation of any street trees and side walks on the lots in Unit 1 that have not been built on yet. The punch list items noted below and the westerly Storm Water detention area (Parcel 2 of Unit 1) are not being accepted at this time. Staff has stated that the bond amount will be \$165,376.00 for these items. This will be the only surety required for the acceptance of the Unit 1, detention ponds in Unit 4 improvements to take place. Any existing surety held by the Village for Unit 1 will be released upon formal acceptance of the public improvements related to Unit 1, and the ponds in Unit 4.

Unit 4 has two basins to be accepted by the Village. Of the two, one is in a condition that is ready to be accepted and the other is not. Regardless, our understanding is that the Village will accept both basins (without further surety) in exchange for a onetime payment of \$11,437.88 after which Saratoga Homes/JNC Development of Illinois LLC shall be relieved of any and all further obligations for said Unit 4 basins.

The Village will also accept, at this time, the Detention basin located in Unit 3. The remainder of acceptance of public improvements for Unit 3 shall be addressed by the Parties separately at a later date in a like manner as the Village is doing for Units 1 and 2. The Village agrees to accept the Unit 3 improvements in 2011 subject to satisfactory completion of any punch list items.

We will satisfy the Annexation Agreement requirements related to the Dickson Road Realignment contained in paragraph 14 of the Agreement as follows: We are utilizing the option set forth in subparagraph G of paragraph 14. The Village Engineer has calculated a price of \$793,020.76 to be deposited with the Village as the Saratoga Homes/JNC Development of Illinois, LLC's sole contribution for any remaining

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obligations for the Dickson/Gordon/Cannonball roadway improvements and right of way acquisitions as set forth in paragraph 14 of the Annexation Agreement; subject to any credits for any portions of the roadway improvement previously constructed by the Saratoga Homes/JNC Development of Illinois, LLC. Our engineer and the Village Engineer have met and discussed any credits due and owing to the Saratoga homes/JNC Development, LLC. While there is a reasonable disagreement between the engineers over the credits due, and the amounts of the credits, Saratoga Homes and JNC Development of Illinois, LLC are prepared to move forward and waive their credits for work previously done in exchange for the Village accepting all of the improvements in Unit 2 and Unit 3 following the same process as Unit 1 (pending final inspection of punch list items).

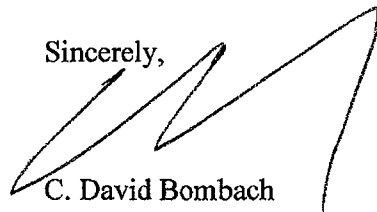
The Village has conducted its inspection of the improvements in Unit 2, and if this is agreeable, as soon as weather allows, we hope to complete the punch list for Unit 2 per EEI's July 20, 2010 punch list inspection letter for Balmorea #2, attached hereto as Exhibit "A". The Village then in a like manner would finalize a Unit 2 and Unit 3 acceptance as the Village is doing for Unit 1.

As to the punch list items for Unit 1 that are not being accepted, there are two "b-boxes" and some lot grading that requires correction. We are requesting that this work wait until this spring. The amount of said correction shall be included in the new letter of credit. The corrections shall occur prior to June 21st, 2011. Additionally, there are also 5 "as-built record drawings" that have not been approved yet. Developer shall provide these within 50 days of the date of this letter. Until provided, a sum of \$1,250.00 shall also be included in the aforementioned Letter of Credit.

Ms. Gaura, it is unfortunate for all of us that the economy has turned in such a bad way against all of us. That does not change the fact that working with the Village of Montgomery, its personnel, attorneys and engineers has always been a positive experience. We still feel our relationship with the Village is a long-term investment which will be beneficial for all of us.

Please advise if we may proceed with the outline concept set forth in my letter.

Sincerely,



C. David Bombach
C.E.O. Saratoga Corporate Management Group

CDB:sjb

Cc: Carlos D. Bombach, COO
James F. Bombach, CCO
Pavan Peddireddy, Division President